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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~329~~ 66

GEORGE M. PETERS, APPELLANT,

vs.

JULIUS A. HANSON AND CORTLAND C. VAN CAMP, PARTNERS UNDER THE FIRM-NAME OF HANSON, VAN CAMP & CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED OCTOBER 3, 1885.

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1 Pleas of the circuit court of the United States within and for the district of Indiana, begun and holden at the United States court-house, in the city of Indianapolis, in said district, on the first Tuesday of November, in the year of our Lord one thousand eight hundred and eighty-five, before the Honorable William A. Woods, judge of the district court of the United States for the district of Indiana and *ex officio* judge of said circuit court.

GEORGE M. PETERS
vs.
JULIUS A. HANSON and COURTLAND C. VAN CAMP. } 7367. Chancery.

Be it remembered that heretofore, to wit, at the November term of said court, on the 6th day of January, 1882, before the Honorable Walter Q. Gresham, one of the judges of said court, the following proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by W. Hubbell Fisher and J. W. Firestone, his solicitors, and files his bill of complaint herein in the words following, to wit:

2 *Bill of Complaint.*

To the honorable the judges of the circuit court of the United States for the district of Indiana, in the seventh circuit:

George M. Peters, a citizen of the State of Ohio and residing at the city of Columbus, in said State, brings this bill of complaint against Julius A. Hanson and Cortland C. Van Camp, both citizens of the State of Indiana and residing at the city of Indianapolis, in said last-named State, composing the firm of Hanson, Van Camp & Co., located and doing business in said city of Indianapolis, and thereupon your orator complains and says—

That on and prior to the twenty-fifth day of March, A. D. eighteen hundred and seventy-nine, your orator was the original and first inventor of an improvement in vehicle dashes, fully described in the letters patent hereinafter mentioned, and which had not been known or used before his said invention, and which at the time of his application for a patent, as hereafter mentioned, had not been for more than two years in public use or on sale with his consent and allowance.

And your orator further shows unto your honors that your orator (George M. Peters aforesaid), being so as aforesaid the first inventor and discoverer of said improvement and being also a citizen of the United States, did, on the 25th day of March, A. D. 1879, upon due application therefor, obtain letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid and numbered 213,529, whereby there was granted and secured to your orator (said George M. Peters), his heirs, administrators, or assigns or intended so to be,

for the term of seventeen years from and after the date of said letters patent, the full, exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, as set forth in said letters patent, which are now remaining of record in the Patent Office of the United States, and by virtue whereof your orator (said George M. Peters) became, still is, the sole owner of all the rights and privileges granted and secured or intended to be granted and secured in and by the said letters patent, as by said letters patent or a duly certified copy thereof, here in court to be produced, will fully and at large appear.

And your orator further shows unto your honors that by virtue of the premises your orator (the said George M. Peters) became and now is the sole and exclusive owner of said letters patent No. 213,529, dated March 25, A. D. 1879, and the inventions and improvements described therein, and of all the rights and privileges granted and secured or intended to be granted and secured thereby; and that since he became the owner thereof as aforesaid he has invested and expended large sums of money and has been to great trouble in and about said invention, and for the purpose of carrying on through the Peters Dash Company and the Columbus Buggy Company, both of the city of Columbus, State of Ohio, and of which your orator is a largely interested member, the business of manufacturing dashes and feet embodying said invention and improvement, and of selling the same as independent articles of sale, and also of selling the same attached to vehicles of said companies' manufacture and making the same profitable to himself and useful to the public; and that said invention has been and is of great benefit and advantage, and that great numbers of said dashes and feet were made according to said invention and sold by said companies as a distinct article of sale, and also as attached to and sold with vehicles of said companies' manufacture, to great advantage to the public; and that the public have generally acknowledged and acquiesced in the aforesaid rights of your orator; and your orator believes that he will realize and receive large gains and profits therefrom if infringements by said defendants and their confederates shall be prevented.

Yet the said defendants, well knowing the premises and the rights secured to your orator aforesaid, but contriving to injure your orator and to deprive him of the benefits and advantages which might and otherwise would accrue unto your orator (said Peters) from said inventions, after the issuing of the letters patent as aforesaid and before the commencement of this suit, did, as your orator is informed and believes, without the license or allowance and against the will of your orator, and in violation of his rights, and in infringement of the aforesaid letters patent No. 213,529, unlawfully and wrongfully and in defiance of the rights of your orator cause to be made, used, and vend to others to be used, the said invention, and did cause to be made, used, and vend to others to be used, vehicle dashes and dash feet made according to and employing and containing said inventions, and that they still continue so to do; and that they are threatening to cause to be made the aforesaid

vehicle dash and dash feet in large quantities, and to supply the market therewith, and to sell the same. Your orator complains and says that on and prior to the 24th day of February, A. D. 1880, your orator was the original and first inventor of certain improvements in vehicle dash frames, fully described in the letters patent hereafter mentioned, and which had not been known or used before his invention, and which at the time of his application for a patent, as hereafter mentioned, had not been for more than two years in public use or on sale with his consent and allowance.

And your orator further shows unto your honors that your orator (George M. Peters aforesaid), being so as aforesaid the first inventor and discoverer of said improvement and being also a citizen of the United States, did, on the 24th day of February, A. D. 1880, upon due application therefor, obtain letters patent of the United States for said invention, in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, bearing date the day and year last aforesaid and numbered 224,792, whereby there was granted and secured to your orator (George M. Peters), his heirs, administrators, or assigns, or intended so to be, for the term of seventeen years from and after the date of said letters patent, the full, exclusive right and liberty of making, constructing, using, and vending to others to be used, the said invention and improvement, as set forth in said letters patent.

And your orator further shows unto your honors that your orator, the said George M. Peters, having for good and lawful cause surrendered said letters patent to the Commissioner of Patents, and having made due application therefor, and having in all things complied with the acts of Congress in such case made and provided, did, on the eleventh day of October, A. D. 1881, obtain new letters patent, being for the same invention, for the residue of said term, and which were marked "reissue No. 9891," and were issued in due form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents, and bearing date the day and year aforesaid, as by the last-mentioned letters patent No. 9891 or a duly certified copy thereof, here in court to be produced, will more fully and at large appear.

4 And your orator further shows unto your honors that by virtue of the premises your orator (George M. Peters) became, and now is the sole and exclusive owner of said reissued letters patent No. 9891 and the inventions and improvements described therein and of all the rights and privileges granted and secured, or intended to be granted and secured, thereby; and that since he became the owner thereof as aforesaid he has invested and expended large sums of money and has been to great trouble in and about said invention and for the purpose of carrying on, through the Peters Dash Company and the Columbus Buggy Company, both of the city of Columbus, State of Ohio, and of which your orator is a largely interested member, the business of manufacturing dashes embodying said invention and improvements and of selling the same as

independent articles of manufacture, and also selling the same attached to vehicles of said companies' manufacture, and making the same profitable to himself and useful to the public; and that said invention has been and is of great benefit and advantage, and that great numbers of said dashes and dash feet were made according to said invention and sold by said companies as a distinct article of sale, and also as attached to and sold with vehicles of said companies' manufacture, to great advantage to the public, and that the public have generally acknowledged and acquiesced in the aforesaid rights of your orator; and your orator believes that he will realize and receive large gains and profits therefrom if infringements by said defendants and their confederates shall be prevented.

Yet the said defendants, well knowing the premises and the rights secured to your orator aforesaid, but contriving to injure your orator and to deprive him of the benefits and advantages which might and otherwise would accrue unto your orator (said Peters) from said invention, after the issuing of the letters patent as aforesaid and before the commencement of this suit, did, as your orator is informed and believes, without the license or allowance and against the will of your orator, and in violation of his rights, and in infringement of the aforesaid reissued letters patent No. 9891, unlawfully and wrongfully and in defiance of the rights of your orator cause to be made, used, and vend to others to be used, the said invention, and did cause to be made, used and vend to others to be used, vehicle dashes and dash feet made according to and employing and containing said invention, and that they still continue so to do; and that they are threatening to cause to be made the aforesaid vehicle dashes and dash feet in large quantities and to supply the market therewith and sell the same.—

All in defiance of the rights acquired by and secured to your orator as aforesaid, and to his great and irreparable loss and injury, and by which he has been and still is being deprived of great gains and profits which he might and otherwise would have obtained, but which have been received and enjoyed and are being received and enjoyed by the said defendants by and through their aforesaid unlawful acts and doings.

And your orator further shows unto your honors, on information and belief, that said defendants have sold large quantities of said dashes and feet and have a large quantity on hand, which they are offering for sale, and have made and realized large profits and advantages therefrom, but to what extent and how much exactly your orator does not know, and prays a discovery thereof; and your orator says that the use of the said invention by said defendants and their preparation for and avowed determination to continue the same and other aforesaid unlawful acts in disregard and defiance of the rights of your orator have the effect to and do encourage and induce others to venture to infringe said patent in disregard of your orator's rights.

5 And your orator further shows unto your honors that he has caused notice to be given to said defendants of said infringements and of the rights of your orator in the premises and requested

them to desist and refrain therefrom; but they have disregarded said notice and refused to desist from said infringements and still continue to make and sell said dashes and dash feet in large quantities and offer them for sale and to make and realize large profits therefrom.

And forasmuch as your orator can have no adequate relief except in this court, to the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths and according to their and each of their several and best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters, and may be compelled to account for and pay to your orator the profits by them or either of them acquired and the damages suffered by your orator from the aforesaid unlawful acts.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief prayed, and full, true, direct, perfect answer make (but not under oath) according to their and each of their best and utmost knowledge, remembrance, information and belief and from the information of their clerks, agents, or workmen.

Firstly. Whether the said defendants or either of them have, since the 25th day of March, A. D. 1879, and before the 27th day of December, A. D. 1881, sold to others residing or having their place of business in the State of Indiana vehicle dashes made by any party or parties (other than the Peters Dash Company of the city of Columbus, Ohio, and the Columbus Buggy Company of said Columbus) and consisting of an iron frame covered with leather, said iron frame having a lower bar containing at or near each end a slot, the length of each slot being parallel to the length of the said bar and said slot passing through the said bar from side to side of the latter—that is to say, from front to rear of the dash—when the dash is in the position it assumes when connected to a vehicle, said slot being suitable for receiving a bolt for connecting the dash to the vehicle or to a dash foot capable of being secured to a vehicle, the said slot rendering the dash capable of being secured to vehicles of different width without additional holes through the dash frame.

Secondly. Whether the said defendants or either of them have, since the 25th day of March, A. D. 1879, and before this 27th day of December, A. D. 1881, sold to others residing or having their places of business in the State of Indiana vehicle dashes made by any party or parties (other than the said Peters Dash Company and the said Columbus Buggy Company) and constructed as described in the foregoing paragraph marked "firstly," and with said dashes have sold dash feet capable of being used to attach said dashes to vehicles, said dash and feet being capable of being secured together by means of bolts or rivets, viz., by one of said bolts or rivets passing through one of said slots and through one end of the foot, and another of said bolts or rivets passing through the other of said slots.

Thirdly. Whether the said defendants or either of them have, since the 25th day of March, A. D. 1879, and this 27th day of December, A. D. 1881, sold to others residing or having their place of business in the State of Indiana vehicle dashes constructed as described in the foreging paragraph marked "firstly," and
6 dash feet and bolts and nuts made by — party or parties (other than the said Peters Dash Company and the Columbus Buggy Company), said dashes, feet, bolts, and nuts being capable of being secured together as follows, viz: One of the bolts passing through one of the slots in the dash and through the end of the foot, and the said bolt being securrd by a nut screwed onto the end of the said bolt, the dash and the foot being firmly held or clamped together between the bolt head and the nut, and another of said bolts passing through the other of said slots in the dash and through the end of another foot, and the said last-named bolt being secured by a nut screwed onto its end, the dash and foot being firmly held or clamped together between the head of said last-named bolt and nut.

Fourthly. Whether the defendants or either of them have, since the 25th day of March, A. D. 1879, and prior to this 27th day of December, A. D. 1881, sold to any party or parties residing in or having his or their place of business in Indiana vehicle dashes made by party or parties (other than the Peters Dash Company and Columbus Buggy Company) and constructed as described in paragraph marked "firstly," as independent articles of manufacture—that is to say, separate and apart from any vehicle or vehicles, or sold said dashes with feet capable of being secured to such dashes in the manner mentioned in the paragraphs marked "secondly" and "thirdly," as independent articles of manufacture—that is to say, separated from a vehicle or vehicles.

Fifthly. Whether the defendants or either of them have, since the 25th day of March, A. D. 1879, and prior to this 27th day of December, A. D. 1881, sold vehicle dashes or dashes and dash feet made by a party or parties (other than the Peters Dash Company and the Columbus Buggy Company) and constructed as described in the said letters patent No. 213,529; and, if not, then how the said feet and dashes sold by the defendants or either of them resemble and how far they differ from the dash or dash and feet described in said letters patent No. 213,529.

Sixthly. Whether the said defendants or either of them have, since the 11th day of October, A. D. 1881, and before this 27th day of December, A. D. 1881, sold to party or parties residing in or having his or their place of business in Indiana aforesaid, vehicle dashes made by a party or parties (other than the said Peters Dash Company or the said Columbus Buggy Company) and consisting of an iron frame covered with leather, the lower bar of said iron frame having at or near each end a longitudinal slot to receive the bolt connecting the dash to the vehicle or to the dash foot, the sides or faces of said lower bar being channeled longitudinally and the web of said channel being parallel to the plane of the dash.

Seventhly. Whether the said defendants or either of them have,

since the 11th day of October, A. D. 1881, and before this 27th day of December, A. D. 1881, sold to party or parties residing in or having their place of business in the State of Indiana dash feet in connection with or separate from vehicle dashes (said dash feet and dashes being made by a party or parties other than the said Peters Dash Company and the said Columbus Buggy Company), said dash feet being constructed with a channel or groove upon their under side.

Whether the said defendants or either of them have, since the 11th day of October, A. D. 1881, and before this 27th day of December, A. D. 1881, sold vehicle dashes or dash feet or both (made by parties other than the Peters Dash Company and the Columbus Buggy Company), constructed as described in said reissued letters patent No. 9891; and, if not, then how said dashes and feet sold by the defendants or either of them resemble or how far they differ from the dash and feet described in said reissued letters patent No. 9891.

7 And your orator prays that said defendants, Julius A. Hanson and Cortland C. Van Camp, and either of them, and their confederates, clerks, servants, agents, attorneys, and workmen, and each and every of them, may be restrained and enjoined provisionally and perpetually by the order and injunction of this honorable court from directly or indirectly making, constructing, using, vending, delivering, working, or putting into practice, operation, or use, or in anywise counterfeiting or imitating the said invention or any part thereof, or any vehicle dashes or dash feet made in accordance therewith or like or similar to those which they heretofore caused to be made or sold, and that the said defendants may be decreed to pay the costs of this suit; and that your orator may have such further relief or such other relief as to this honorable court shall seem meet and as shall be agreeable to equity.

May it please your honors to grant unto your orator the writ of injunction, as well provisional as perpetual, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendants, Julius A. Hanson and Cortland C. Van Camp, and either of them, and their confederates and clerks, servants, agents, attorneys, and workmen, and each and every of them, as is hereinbefore in that behalf prayed.

May it please your honors to grant unto your orators the writ of subpœna, issuing out of and under the seal of this honorable court, directed to the said Julius A. Hanson and Cortland C. Van Camp, commanding them by a certain day and under a certain penalty to be and appear in this honorable court, then and there to answer the premises, and to stand to and abide such order and decree as may be made against them.

And your orator will ever pray, &c.

GEORGE M. PETERS.

WM. HUBBELL FISHER AND
JASON W. FIRESTONE,
Complainant's Solicitors.

UNITED STATES OF AMERICA,
Eastern Division of the Southern District of Ohio, } ss:

In the Sixth Circuit.

On this 27th day of December, A. D. 1881, before me personally appeared George M. Peters, the above-named complainant, who, being by me first duly sworn, deposes and says that he has read the foregoing bill of complaint subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

GEORGE M. PETERS.

Sworn to by the said George M. Peters and by him subscribed in my presence on this 27th day of December, A. D. 1881.

[SEAL.] W. E. GUERIN,
Notary Public.

And afterwards, to wit, at the November term, 1881, of said court on the 6th day of February, 1882, before the Honorable Walter Q. Gresham, one of the judges as aforesaid of said court, the following proceedings, in the above-entitled cause were had, to wit:

8 Come now the defendants, by Stem and Peck, their solicitors, and enter their appearance herein in the words following, to wit:

The clerk will enter our appearance for the respondents in the above-entitled cause.

STEM & PECK.

And afterwards, to wit, at the November term, 1881, of said court, on the 6th day of March, 1882, before the Honorable Walter Q. Gresham, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, by Stem and Peck, their solicitors, and file their demurrer to the bill of complaint herein in the words following, to wit:

The demurrer of Julius A. Hanson and Courtland C. Van Camp, defendants, to the bill of complaint of George M. Peters, complainant.

These defendants, by protestation, not confessing all or any of the matters and things in the plaintiff's bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, do demur to said bill, and for cause of demurrer show that it appears by the said bill that the same is exhibited against these defendants for distinct matters and causes improperly joined,
9 and by joining distinct matters together which do not depend on each other the proceedings in the progress of this suit will be intricate and prolix and these defendants put to unnecessary

charges and expense in matters which in no way relate to or concern one another or these defendants, and that the said bill is altogether multifarious.

Wherefore, and for other divers causes of demurrer appearing in the said bill, these defendants do demur thereto, and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

We certify that, in our opinion, the foregoing demurrer of the defendants to the bill of complaint of George M. Peters, complainant, is well founded in law and proper to be filed in this cause.

STEM & PECK,
Solicitors for Def'ts.

STATE OF INDIANA, }
County of Marion, } ss:

Julius A. Hansen & Courtland Van Camp, being duly sworn, depose and say that they are the defendants in this cause, and have read the foregoing demurrer to the bill of complaint in this suit, and that the same is not interposed for the purpose ef any delay.

JULIUS A. HANSEN.
CORTLAND VAN CAMP.

Subscribed and sworn to before me this — day of March, A. D. 1882.

[SEAL.] FRANK H. LEVERING,
Notary Public.

Commissioned Jan. 28, 1881; expires Jan. 28, 1885.

And afterwards, to wit, in recess of said court, on the 1st day of May, 1882, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant and files his motion for leave to amend the bill of complaint herein in the words following, to wit:

And afterwards, to wit, at the May term of said court, on the 2d day of May, 1882, before the Honorable Walter Q. Gresham, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by his solicitors, and files his amendment to the bill of complaint herein in the words following, to wit:

Amendment to Bill of Complaint.

And now comes the complainant, and with the consent of the respondents above named, and by leave of this honorable court first had and obtained, doth hereby amend his said bill of complaint filed herein as follows:

Immediately before the paragraph beginning "All in defiance of,"

etc., insert "And your orator complains and says that the dashes and feet of which he has hereinbefore complained as infringing the said letters patent No. 213,529, and the dashes and feet of which he has hereinbefore complained as infringing the said reissued letters patent No. 9891, are one and the same, and that each of the dashes
11 or dashes and feet hereinbefore referred to infringes both of the aforesaid letters patent No. 213,529 and No. 9891, and that the infringements hereinbefore mentioned are caused by the use or sale, or both, of the said dashes and feet, and that each of the dashes hereinbefore complained of as infringing the said letters patent No. 213,529 is the same dash of which he has complained as infringing the said reissued letters patent No. 9891, and that each of the feet with dash of which he has hereinbefore complained as infringing the said letters patent No. 213,529 is the same foot of which he has complained as infringing the said reissued letters patent No. 9891.

Cincinnati, O., April 28, 1882.

WM. HUBBELL FISHER AND
JASON W. FIRESTONE,
Complainant's Solicitors and of Counsel.

And afterwards, to wit, at the May term of said court, on the 8th day of May, 1882, before the Honorable Walter Q. Gresham, one of the judges aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by William Hubbell Fisher and J. W. Firestone, his solicitors, and come also the defendants, by Stem and Peck, their solicitors, and said several parties now file their stipulation herein in the words following, to wit:

It is mutually stipulated and agreed by and between the parties above named that the demurrer herein shall be, and is hereby, formally waived, and that the respondents above named shall have until the 5th day of June, 1882, in which to file their answers, and shall file their answers on or before said 5th day of June, A. D. 1882.

Cincinnati, O., May 6th, 1882.

WM. HUBBELL FISHER AND
J. W. FIRESTONE,
Sol'rs & of Counsel for Complainant.
STEM & PECK,
12 *Sol'rs & of Counsel for Respondents.*

And afterwards, to wit, at the May term of said court, on the 5th day of June, 1882, before the Honorable Walter Q. Gresham, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, by Mess. Stem and Peck, their solicitors, and file their joint, several and separate answers herein, respectively, in the words following, to wit:

The joint and several answers of Julius A. Hanson and Courtland Van Camp, partners under the firm name of Hanson, Van Camp, & Co., defendants, to the bill of complaint of George M. Peters, complainant.

These defendants now and at all times hereafter, saving and reserving to themselves and each of them all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for *him* to make answer unto, answering, say:

13 First. They admit that letters patent of the United States, No. 213,529, for a certain improvement in vehicle dashes, were issued March 25, 1879, to George M. Peters; but as to the allegations in said bill of complaint that said George M. Peters was the original and first inventor of said alleged improvement, and that the same was useful and was not known or used before his alleged invention, and had not, at the time of his application for a patent therefor, been in public use or on sale for more than two years with his consent and allowance or without his consent and allowance, and that he made application to the Commissioner of Patents in accordance with the then existing acts of Congress, or duly complied with the law in such case made and provided, these defendants deny the same; and deny that any exclusive rights were granted the said Peters, his heirs, administrators, or assigns, thereby, and that he was and is the sole owner of any rights or privileges alleged to be granted or secured thereby.

Second. They deny that said Peters has at any time invested and expended large sums of money, or any sums of money and has been to great trouble or to any trouble in and about said alleged invention and for the purpose of carrying on through the Peters Dash Company and the Columbus Buggy Company, or any other persons,

14 firms, or corporations, the business of manufacturing dashes and feet embodying said alleged invention or improvement, and of selling the same as independent articles of sale or attached to vehicles, and making the same profitable to himself and useful to the public; and that said invention has been and is of any benefit and advantage; and that any dashes and feet have been made by any person, firm, or corporation according to said alleged invention and sold in any manner whatsoever to any advantage to the public; and that the public has generally acknowledged or acquiesced in any alleged rights of the said Peters.

Third. They deny that the said alleged invention of Peters was patentable, novel, and useful, and allege that the said Peters obtained said patent for what was old and well-known and had been invented, discovered, patented, and had been shown in printed publications and was in public use and on sale long before his alleged invention thereof.

Fourth. They deny that they have contrived to injure the said Peters and to deprive him of any benefits and advantages which

might or would accrue to him by reason of said alleged invention, and they deny that they have infringed the aforesaid letters
15 patent No. 213,529 or *or* have made, caused to be made, used, or sold to others to be used, or have threatened so to do, any vehicle dashes or dash feet whatsoever made in infringement of the aforesaid letters patent, and they deny that they have done any acts in the premises contrary to equity or good conscience.

Fifth. They admit that letters patent of the United States No. 224,792 for certain alleged improvements in vehicle dash frames were issued February 24, 1880, to George M. Peters; but as to the allegations in said bill of complaint that said Peters was the original and first inventor of said alleged improvements, and that the same were useful and were not known or used before his alleged invention, and had not been with or without his consent or allowance in public use or on sale, and that he made application to the Commissioner of Patents in accordance with the then existing acts of Congress or duly complied with the law in such case made and provided, these defendants deny the same, and deny that any exclusive rights were granted the said Peters, his heirs, administrators, or assigns, thereby, and that he was and is the sole owner of any rights or privileges alleged to be granted or secured thereby.

16 Sixth. They admit that reissued letters patent of the United States No. 9891, the same being a reissue of the aforesaid patent No. 224,792, were issued October 11th, 1881, to the said George M. Peters for an alleged improvement in vehicle dash frames; but as to the allegations in said bill of complaint contained that the aforesaid patent No. 224,792 was surrendered for good and lawful cause, and that the application was made to the Commissioner of Patents in due form and in accordance with the law in such case made and provided, and that the reissued patent No. 9891 was issued for the same alleged invention, these defendants deny the same.

Seventh. They allege that said reissued patent is invalid—

A. For that the original patent was not surrendered, because it was inoperative or invalid by reason of a defective or insufficient specification or by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new.

B. For that it contains new matter not found in the original and is for a different invention from the original patent.

C. For that the patentee sought to cover other and subsequent inventions than that disclosed in the original patent.

D. For that it is expanded and enlarged beyond the inven-
17 tion disclosed in the original patent.

Eighth. They deny that said Peters has at any time invested and expended large sums of money or any sums of money and has been to great trouble or to any trouble in and about said alleged invention and for the purpose of carrying on, through the Peters Dash Company and the Columbus Buggy Company or any other persons, firms, or corporations, the business of manufacturing dashes and feet embodying said alleged invention or improvement and of selling the same as independant articles of sale or attached

to vehicles and making the same profitable to himself and useful to the public, and that said invention has been and is of any benefit or advantage, and that any dashes and feet have been made by any person, firm, or corporation according to said alleged invention and sold in any manner whatsoever to any advantage to the public, and that the public has generally acknowledged or acquiesced in any alleged rights of the said Peters.

Ninth. They deny that the said alleged invention of Peters was patentable, novel, and useful, and allege that the said Peters obtained said patent for what was old and well-known and had been invented, discovered, patented, and had been shown in printed publications and was in public use and on sale long before his
18 alleged invention thereof.

Tenth. They deny that they have contrived to injure the said Peters and to deprive him of any benefits and advantages which might or would accrue to him by reason of said alleged inventions, and they deny that they have infringed the aforesaid reissued patent No. 9891 or have made, caused to be made, used, or sold to others to be used, or have threatened so to do, any vehicle dashes or dash feet whatsoever made in infringement of the aforesaid letters patent, and they deny that they have done any acts in the premises contrary to equity or good conscience.

Eleventh. They deny that they have on hand, or have sold or used, or have offered for sale large quantities of, or any, dashes or dash feet whatsoever made in infringement of either of the aforesaid patents or in violation of any lawful rights of the said Peters, and they deny that they have realized any gains or profits from the manufacture, sale, or use of dashes or dash feet made in infringement of either of the aforesaid letters patent.

Twelfth. They deny that the said Peters has caused notice to be given them that they were infringing the aforesaid letters patent.

Thirteenth. They allege that they are not manufacturers of any kinds of dashes or dash feet, and that those dashes and dash
19 feet which they have sold were purchased by them in the open market.

Fourteenth. Further specifically answering the numbered interrogatories contained in said bill of complaint, they say—

1st. That between March 25th, 1879, and December 27th, 1881, they sold to their customers in the State of Indiana vehicle dashes consisting of an iron frame covered with leather and having a lower bar with slots through it near its ends in the line of said bar suitable for receiving a bolt for connecting the dash to the vehicle through the medium of feet and to vehicles of different widths, but they deny that said dashes infringed either of complainant's patents herein sued on.

2nd. That between the aforesaid dates they have also sold, with the dashes above designated, dash feet capable of being secured to the dashes by bolts or rivets, as specified in the 2d interrogatory of the bill, but they deny that such dashes and dash feet were infringement of either of complainant's patents herein sued on.

3d. That they have sold, between the dates aforementioned, with

the aforesaid dashes and dash feet, bolts and nuts capable of uniting the dashes and dash feet in the manner specified in the third interrogatory of the bill, but deny that they by so doing infringed either of complainant's patents herein sued on.

20 4th. That they have sold between the aforementioned dates dashes and dash feet, as above designated, as independent articles aside from the vehicles to which they were to be attached.

5th. That the dashes sold by them between October 11, 1881, and December 27, 1881, had its lower bar slotted, as aforesaid in the first paragraph above, and had longitudinal channels on its sides, with the web of said channel in the plane of the dash, but that such construction did not infringe either of the patents herein sued on.

6th. That between October 11, 1881, and December 27th, 1881, they sold dash feet which were constructed with a groove or channel upon their under sides, but that such feet did not infringe either of the patents herein sued on.

7th. That none of the dashes or dash feet sold by them at any time infringed either of the patents herein sued on, and that all the dashes sold by them between the dates inquired about were made by other parties than the Peters Dash Company and the Columbus Buggy Company.

Fifteenth. These defendants, having fully answered the allegations in the said bill of complaint contained, by way of further defense, on information and belief, allege—

A. That the alleged inventions sought to be secured by patent 213,529 and by reissue 9891 were in public use and on

21 sale in this country and had been discovered by others prior to the alleged discovery or invention. thereof by said George M. Peters.

B. That the alleged inventions sought to be secured by patent 213,529 and by reissue 9891 were in public use or on sale in this country for more than two years prior to the application of said Peters for letters patent therefor.

C. That said alleged inventions had been abandoned to the public.

D. That prior to the alleged invention or discovery by the said Peters the alleged inventions sought to be secured by patents 213,529 and reissue 9891 were in public use or on sale in this country by the following-named persons and at the following-named places, to wit:

At Cincinnati, Ohio, by D. C. Shotts, August Wunck, Bernard Vierkamp, John M. Miller, L. B. Harrison, D. W. Miller, George H. Groot, which use is known to those people, who now reside and may be found at said Cincinnati.

At Cincinnati, Ohio, by George H. Knight, which use is known to said Knight, now residing in the State of Kentucky, but who may be found at said Cincinnati.

At Pulaski, Pennsylvania, in the county of Lawrence, by Joseph M. Brown, which use is known to the said Brown, who now

22 resides and may be found at Cincinnati, Ohio.

At Kalamazoo, Michigan, used at Rahway, in the county of

Union and State of New Jersey and elsewhere, by Josiah Freer, who now resides and may be found at Gibson, Pike county, and State of Ohio.

At Sandusky, Ohio, by David Fitzgerald and Daniel Goglan, which use is known to said Fitzgerald and Goglan, who now reside and may be found at said Sandusky.

At Milan, in the county of Erie and State of Ohio, by William Beers, which use is known to the said Beers, who now resides and may be found at said Milan.

At Mishawaka, in the county of St. Joseph and State of Indiana, by James Taylor, William Renthrow, —— Eberhart, —— Wood, and —— Post, which use is known to said Taylor, now residing at Sandusky, Ohio; Taylor, Renthrow, and Eberhardt, now residing at said Mishawaka, and said Post, now residing at Elkhart, in the county of Elkhart and State of Indiana.

At East Randolph, in the county of Cattaraugus and State of New York, by D. C. Hewitt, which use is known to the said
23 Hewitt, who now resides at ——, in the county —— and State of Kansas.

At East Randolph aforesaid, by C. C. Holt, Thos. M. Smith, and H. Hall, Jr., which use is known to the said Holt, Smith, and Hall, who now reside and may be found at said East Randolph.

At East Randolph aforesaid, by William Franklin, which use is known to the said Franklin, who now resides and may be found at Corry, Erie county, and State of Pennsylvania.

Sixteenth. That the said George M. Peters was not the original or first inventor or discoverer of any material or substantial part of the things patented in either patent 213,529 or reissue 9891, but that prior to his alleged inventions or discoveries the same were shown in the following letters patent, to wit:

No. 75746, granted William Franklin and T. M. Smith March 24, 1868, for dash-board for carriages.

No. 159,848, granted Christian C. Schwaner February 16th, 1875, for dash-board for carriages.

English patent, No. 568 of March 7th, 1853, granted to Godfrey Simon and Thomas Humphreys for improvements in carriages.

American letters patent (reissue) No. 4861, granted to George M. Peters April 9, 1872.

24 American letters patent (reissue) No. 4408, granted to George M. Peters May 30, 1871.

American letters patent (reissue) No. 7789, granted George M. Peters July 10, 1877, and in other letters patent, the numbers, dates, and grantees of which are at present unknown to this defendant, but when ascertained it craves leave to add hereto.

Without this, that there is any other matter, cause, or thing in said complainant's said bill contained material or necessary for these respondents to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided, or denied, is true, to the knowledge or to the belief of these respondents.

All of which matters and things these respondents are ready and willing to aver, maintain, and prove as this honorable court directs;

and humbly pray to be dismissed with *its* reasonable costs and charges in this behalf most wrongfully sustained.

JULIUS A. HANSON.
CORTLAND VAN CAMP.

STEM & PECK,
Sol'rs & Counsel for Def'ts.

STATE OF INDIANA, } ss:
Marion County, }

On this 5th day of June, A. D. 1882, personally appeared
25 before me, the subscriber, Julius A. Hanson and Courtland Van Camp, defendants herein, who, being duly sworn, say that they have read the foregoing answer; that they know the contents thereof, and that the same are true of their own knowledge, except as to matters herein stated on information and belief, and as to those they believe them to be true.

JULIUS A. HANSON.
CORTLAND VAN CAMP.

Subscribed and sworn to before me this 5th day of June, A. D. 1882.

[SEAL.] FRANK H. LEVERING,
Notary Public.

Commissioned Jan. 28, 1880; expires Jan. 28, 1884.

And afterwards, to wit, at the May term of said court, on the 29th day of June, 1882, before the Honorable Walter Q. Gresham, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, by Stem and Peck, their solicitors, and file their amended answer herein in the words following to wit:

Now come the defendants and, leave of court being had, amend their answer herein as follows:

These defendants, further answering, say that the alleged in-
26 ventions described and claimed in the said letters patent No. 213,529 granted to George M. Peters on March 25, 1879, and reissued patent No. 9891, granted October 11, 1881, to said George M. Peters as a reissue of letters patent No. 224,792 was not new; that the devices described and claimed in said letters patent were not new inventions; that said alleged improvements did not require any inventive skill, and did not constitute inventions at all; that long prior to the date of their alleged invention by George M. Peters they were known and publicly used by others, to wit:

At shop of —— Fiske, in city of Laporte, Indiana, which use is known to William Rentfrow and others, who now reside and may be found at said Laporte.

At shop of Fosdick & Co., Laporte, Indiana, by William Rentfrow and others, which use is known to the said Rentfrow and others, who now reside and may be found at said Laporte.

At shop of David Dalzell, South Egremont, Massachusetts, by

Hezekiah Manwaring and others, which use is known to the said Mannering and others, who now reside and may be found at said South Egremont.

At shop of Hezekiah Manwaring in Danville, Kentucky, by said Manwaring and Benjamin Kinkaid and others, which use is
27 known to the said Manwaring and Kinkaid, who now reside and may be found at said Danville.

At shop of Philip Tresoll, at Gettysburgh, Penn., by William Brickell and others, which use is known to said Brickell, who now resides and may be found at Cincinnati, Ohio.

At shop of Wm. Huffman, Sheppardstown, Penn., by William H. Brickell and others, which use is known to said Brickell, who now resides and may be found at Cincinnati, Ohio.

At shop of Brickell & Mills, Cincinnati, O., by —— Brickell and —— Mills, which use is known to said Bickell and Mills, who now reside and may be found at said Cincinnati.

At shop of S. R. Baker, New Haven, Ohio, by Joseph W. Brown, which use is known to the said Brown, who now resides and may be found at Cincinnati, Ohio.

At shop of Woodmansee & Kean, Monroe, Ohio, by Jos. W. Brown, which use is known to the said Brown and others, who now reside and may be found at said Monroe & Cincinnati, Ohio.

At shop of Hovey & Ward, St. Louis, Missouri, by Joseph W. Brown, which use is known to said Brown and others, who now reside and may be found at said St. Louis & Cincinnati, Ohio.

28 At shops of Wilcox & Howe, Birmingham, Conn., by —— Wilcox and —— Howe and —— Savage, which use is known to said Wilcox, Howe, and Savage, who now reside and may be found at said Birmingham.

At Philadelphia, Penn., and other places, by B. J. Warder, which use is known to the said Warder, who resides and may be found at Monroeville, Ohio.

At shops of John R. Phillips, Sharon, Ohio, by Joseph W. Brown & others, which use is known to said Brown, who now resides and may be found at said Sharon & Cincinnati, Ohio.

At the carriage manufactory of Hovey & Wood in Cincinnati, Ohio, by Miller and Loris, which use is known to said Miller & Loris, who now reside and may be found at said Cincinnati, Ohio.

At Havenstown, New York, by John P. Hastings, which use is known to said Hastings, who now resides and may be found at Cincinnati, Ohio.

At shop of David Agnew, Newburg, N. Y., by John P. Hastings and others, which use is known to said Hastings and others, who now reside and may be found at said Newburg, N. Y., and Cincinnati, Ohio.

At shop — William Kew, Bansville, Canada, by John P. Hastings, which use is known to said Hastings, who now resides and
29 may be found at Cincinnati, Ohio.

At Jinkintown, New York, by John P. Hastings, which use is known to said Hastings, who now resides and may be found at Cincinnati, Ohio.

At shop of James Reed, Canterbury, N. Y., by John P. Hastings and others, which use is known to said Hastings, who now resides and may be found at Cincinnati, Ohio.

At shops of Babcock and Gustin, Kalamazoo, Michigan, by Alonzo F. Hubbell and others, which use is known to said Hubbell, who now resides and may be found at Sandusky, Ohio.

At Elkhart, Indiana, by A. C. Post, which use is known to said Post, who now resides and may be found at said Elkhart.

By George M. Peters, at Columbus, Ohio, which use is known to said Peters, who now resides and may be found at said Columbus.

By —— Smith, at Randolph, New York, which use is known to said Smith, who now resides and may be found at said Randolph.

By George Montieth, at Cincinnati, Ohio, which use is known to said Montieth, who now resides and may be found at said Cincinnati.

30 Further answering, these defendants deny that said George M. Peters was the original or joint inventor of any material or substantial parts of the things patented in the aforesaid letters patent, but that long prior to his alleged inventions or discoveries the same were shown in the following letters patent of the United States, to wit:

No. 10342, granted G. Simon, Dec. 20th, 1853.
" 13171, " G. R. Comstock, Jan. 23d, 1855.
" 110,434, " A. Clarke, Dec. 27th, 1870.
" 87026, " J. R. Chappell, Feb'y 16th, 1869.
" 156,682, " J. R. Streeter, Nov. 10th, 1874.
" 112,524, " J. R. Auchenback, M'ch 14th, 1871.
" 146,797, " J. R. Althouse, Jan. 27, 1874.
" 143,031, " T. W. & H. K. Porter, Sept. 23, 1873.
" 170,759, " G. W. Miller, Dec. 7, 1875.
" 84603, " C. W. Aiken, Dec. 1, 1868.
" 139,086, " H. Leitz, May 20, 1873.
" 81368, " C. W. Grete, Aug. 25, 1868.
" 91941, " W. K. Johnston, June 29, 1869.
" 62796, " J. F. Wood, M'ch 12, 1867.
" 168,831, " E. A. Cooper, Oct. 19, 1875.
" 178,899, " F. W. Bishop, June 20, 1876.
" 98670, " J. A. Crandall, Jan. 11, 1870.
" 13311, " M. G. Hubbard, July 20, 1855.
" 81882, " H. Davidson, Sept. 8, 1868.
" 162,315, " G. M. Peters, Apr. 6, 1870.
Reissue No. 4861, granted G. M. Peters, Apr. 9, 1872.
Reissue No. 4408, granted G. M. Peters, May 30, 1871.
" " 7780, " " " Jan. 10, 1878.
No. 204,530, granted J. W. Brown, Jan. 4, 1878.
No. 61188, granted P. T. Coates, Jan. 15, 1867.
31 No. 225,669, granted B. J. Warden, M'ch 16th, 1880.
" 228,575, " " " June 8th, 1880.

English patent No. 568, granted to Godfrey Simon and Thos. Humphries, M'ch 7th, 1853, for carriages.

English patent No. 11191, granted George Paliste, May 8th, 1846.

Without this, that there is any other matter, cause, or thing in said complainant's said bill contained material or necessary for these respondents to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed or avoided, or denied, is true, to the knowledge or to the belief of these respondents.

And these defendants pray as they have heretofore prayed.

JULIUS A. HANSON.
CORTLAND VAN CAMP.

STATE OF INDIANA, } ss:
County of Marion, }

On this 29th day of June, A. D. 1882, personally appeared before me the subscribers, Julius A. Hanson and Courtland C. Van Camp, the defendants named in the foregoing amended answer, who, being duly sworn, say that they have read the said amended answer and know the contents thereof, and that the same are true of their own knowledge, except as to the matters therein stated on infor-
32 mation and belief, and as to these they believe them to be true.

JULIUS A. HANSON.
CORTLAND VAN CAMP.

Subscribed and sworn to before me this 29th day of June, A. D. 1882.

FRANK P. LINDSAY,
Notary Public.

And afterwards, to wit, at the May term of said court, on the 3d day of July, A. D. 1882, before the Honorable Walter Q. Gresham, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by his solicitors, and files his replication to the answer herein in the words following, to wit:

Replication.

The replication of George M. Peters, complainant, to the answers of Julius A. Hanson and Courtland C. Van Camp, defendants above named.

This repliant, saving and reserving unto himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answers, for replication thereunto says that he will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answers contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied

is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

Cincinnati, O., June 30, 1882.

WM. HUBBELL FISHER AND
JASON W. FIRESTONE,
Complainant's Solicitors and of Counsel.

And afterwards, to wit, in recess of said court, on the 3d day of November, 1882, the following further proceedings in the
33 above-entitled cause were had, to wit:

Come now the parties, by their respective solicitors, and file their stipulations herein, respectively, in the words following, to wit:

It is hereby stipulated by and between said George M. Peters, complainant above named, and Julius A. Hanson and Cortland C. Van Camp, respondents above named, that the following-named dashes and feet were publicly sold by the respondents under the firm name of Hanson, Van Camp & Co., at their store in the city of Indianapolis, Indiana, in the usual course of trade, between the twelfth day of October, A. D. 1881, and before the time when this suit was commenced, viz., dash marked "Dash A" sold with feet marked "Feet A;" also dash marked "B" sold with feet marked "B;" also the dash marked "C" with feet marked "C."

All of the tags attached to said dashes and feet are attested by the signatures of Wm. Hubbell Fisher and Stem & Peck.

And it is agreed that said respondents, under their said firm name and between said 12th day of October, 1881, and before the time of the beginning of this suit, sold at their said store numbers of said dashes and feet for use, etc., to various customers, the precise number of which it is not the province of this stipulation to determine.

Done at Cincinnati, Ohio, this first day of November, A. D. 1882.

WM. HUBBELL FISHER,
Solicitor for Complainant.
STEM & PECK,
Solicitors for Respondents.

2. It is hereby stipulated and agreed by and between the parties above named as follows:

First. That any notary public named by either party may act as special examiner in taking testimony under the sixty-second rule in equity as amended.

Second. That each of the above-named parties may keep possession of their exhibits in the above case until the trial thereof.

Ci'ti, O., Nov. 1, 1882.

WM. HUBBELL FISHER,
Of Solicitors, &c., for Complainant.
STEM & PECK,
Solicitors, &c., for Respondents.

34 And afterwards, to wit, at the May term of said court, on the 3d day of August, 1883, before the Honorable William A. Woods, one of the judges of said court, the following further proceedings were had in the above-entitled cause, to wit:

Come the parties, by their respective attorneys, and file their stipulation herein, in the words following, to wit:

It is hereby stipulated and agreed by and between the parties hereto that the uncertified copies of the specifications and drawings of letters patent No. 213,529, of March 25, 1879, for improvements in vehicle dashes, and No. 224,792, of February 24, 1880, for improvements in vehicle dash frames, and No. 9891, of October 11, 1881, (reissue) for improvements in vehicle dash frames, all granted to George M. Peters, complainant herein, and which were offered in evidence in taking the testimony of Boyd Eliot for complainant herein, at New York, during December, A. D. 1882, shall be received herein, and shall have the same force and effect as the said original patents No. 213,529, No. 224,792, and No. 9891.

Done at Cincinnati, Ohio, July 30th, 1883.

WM. HUBBELL FISHER,
Solicitor, &c., for Complainant.
STEM & PECK,
Solicitors, &c., for Respondents.

And afterwards, to wit, at the November term, 1883, of said court, on the 12th day of January, 1884, before the Honorable William A. Woods, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by counsel, and file their stipulation extending the time of the respondents for taking their testimony herein forty days from the 8th day of January inst.

35 And afterwards, to wit, at the November term, 1883, of said court, on the 13th day of March, 1884, before the Honorable William A. Woods, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, by counsel, and file their stipulation as to the evidence herein in the words following, to wit:

It is hereby stipulated and agreed by and between the parties hereto that uncertified copies of patents may be offered in evidence and used in this cause with the same force and effect as if duly certified.

Cincinnati, O., March 11, 1884.

WM. HUBBELL FISHER AND
JASON W. FIRESTONE,
Attorneys for Plaintiff.
STEM & PECK,
Att'ys for Defendants.

And afterwards, to wit, at the November term of said court, on the 8th day of November, 1884, before the Honorable William A. Woods, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

This cause having come on to be heard upon the bill of complaint, answer, replication, proofs, and arguments of counsel, and the court being fully advised in the premises finds the equities are with the defendants, and doth hereby order, adjudge, and decree that the said bill of complaint be, and the same is hereby, dismissed at complainant's costs.

36 Whereupon the said complainant, by his counsel, prays an appeal to the Supreme Court of the United States, and asks the court to fix the amount of the appeal bond, and the court do allow said appeal, and fix the amount of the appeal bond at five hundred dollars ($500.00).

And afterwards, to wit, at the November term of said court, on the 30th day of December, 1884, before the Honorable William A. Woods, one of the judges as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant, by counsel, and files his appeal bond herein in the penal sum of five hundred dollars, with George M. Peters and William A. Krag, as sureties thereon, and said bond is approved by the court.

EXHIBITS.

COMPLAINANT'S EXHIBIT D.

UNITED STATES PATENT OFFICE.

GEORGE M. PETERS, of Columbus, Ohio.

Improvement in Vehicle Dashes.

Specification forming part of Letters Patent No. 213,529, dated March 25, 1879; application filed June 19, 1875.

To all whom it may concern:

Be it known that I, George M. Peters, a resident of the city of Columbus, in the county of Franklin and State of Ohio, have invented certain new and useful improvements in dashes, of which the following is a specification:

My invention relates, first, to the construction of dashes in sections, permitting the combination of different pieces in constructing dashes of different forms.

It relates, secondly, to the attachment of the dash to the vehicle; and this part of my invention renders the dash capable of

37 attachment to vehicles of different widths, so that it can be sold as an article of manufacture, for application to the vehicle by the purchaser. These features of my invention render the construction easy, expeditious, and economical.

Another feature of my invention consists in such a novel construction of the dash as that there shall be at the part of the frame thereof to which the laterally-adjustable foot is to be attached a proper bearing surface for the support and bracing of the dash.

In the accompanying drawings, which form a part of this specification, figure 1 is a perspective view of sufficient of a vehicle to illustrate my invention; Fig. 2, a sectional detached view; Figs. 3, 4, 5, 6, 8, detached views illustrating modifications, and Fig. 7, a detached perspective view.

One mode of making the dash frame is shown in the drawings, in which G F are parallel uprights at each end, C D E parallel cross-rods, and M L short continuations of the rods G F.

The portion C D M L may be a section in one piece, and may be detachably connected to the other and larger section, thus avoiding the expense and delay incurred in uniting all the parts in one piece, and permitting pieces of different kinds to be united in making up dashes of different forms and sizes.

If desired, there may be but one bar at each end, as shown in Figs. 3, 5, 6, or but one at the top or bottom, Figs. 3, 8.

This sectional construction of the dash and the means for uniting the sections are valuable, and may be employed with or without that portion of my invention which enables the dash to be attached to vehicles of different widths.

In order to connect the frame to the vehicle, and further to permit a frame to be applied to vehicles of different sizes, I construct the frame and the foot H so that by a lateral adjustment in relation to each other the desired connection to bodies of different widths may be effected. The frames may be varied in construction to effect this result. Thus in Figs. 1 and 2 the frame has a wide bearing piece, N, of any desired length, with a slot to receive the fastenings of the foot or attachment H, by which the dash and the body of the vehicle are connected adjustably, so that within the limits of the adjustment the foot secured to the dash may find its bearings on bodies of various widths.

The foot may be of any desired shape, being shown with two branches, *b d*, one bolted or otherwise secured to the dash and the other to the body I of the vehicle.

By the above-described means the dashes may be furnished to the trade as independent articles of manufacture, as the foot may be fitted to vehicles in the process of construction or afterward, and the dash secured without altering or moving it. For the like reason the feet adapted to the vehicles and dashes may be sold separately.

The construction described affords a ready means of constructing and applying the leather covering when the dash consists of a leather-covered frame, as the front and rear sheets, B B′, of the cover may be sewed together at the edges *f*, outside the uprights; and the skirt *k*, below the rail E, may be sewed as required before applying the cover, which then only requires to be drawn on the frame and stitched at the top and inside the rails.

The bearing N for the attachment or foot may be within the frame,

as shown in Figs. 1, 2, 3, 4, and 8, or it may be in an extension outside of the frame, the result being the same—*i. e.*, the frame being adapted to be secured without change to bodies of different widths. This bearing portion N may be secured permanently or detachably to the frame bars. Thus in Figs. 1 and 2 it is provided with sockets for the reception of studs at the ends of the bars. In any case it affords a strong and rigid connection between the foot and the frame, so that the latter cannot be bent over under anything less than destructive pressure. This is especially the case when both uprights, F and G, are secured to the bearing piece N, whether within or without the frame proper; but when within the frame, and extending up between the uprights, it stiffens and braces the latter.

38

The adjustment of the dash and foot is not necessarily limited to the mode described. For instance, it may be effected by means of a series of holes, affording a means of adjusting the foot at different points. When the foot is not required the dash may be connected directly to the body with like advantage, as the points of connection may be varied to suit bodies of different widths.

The feature of lateral adjustability set forth therein is applicable to dashes and feet, or equivalent laterally-adjustable attachments, other than those particularly herein described.

S represents the upper edge rail, consisting of a rigid piece of metal, with a groove to receive the edge of the leather covering over which it is slid. The edge or interior of the rail is coated with cement or varnish, which, while liquid, acts as a lubricator in applying the rail and secures it when it becomes dry.

I am thus enabled to dispense with the tedious process of forming a core or row of stitching to hold the rail to the edge of the leather, or of closing it down on said edge, as usual.

Without confining myself to any special mode of connecting the foot and dash adjustably, I claim—

1. The combination of a dash and laterally-adjustable attachments, whereby the same may be connected to vehicles of different widths, substantially as set forth.

2. A dash or dash frame having slots or openings, whereby attachments may be made at different points, substantially as and for the purpose set forth.

3. A dash provided with bearings having slots or openings, substantially as and for the purpose specified.

4. A dash frame provided with bearings, arranged to strengthen the frame in those parts whereby the dash is to be connected to the laterally-adjustable feet or to the vehicle.

5. A dash frame provided with a detachable top section, substantially as set forth.

6. The combination, with the frame, of the removable bearing piece N, substantially as set forth.

7. A dash provided with a rail or molding, S, secured by cement or other adhesive material, substantially as described.

8. A footless dash frame, one or more of whose various parts are separable from the remaining portions and attachable to the latter,

G. M. PETERS.
Vehicle Dash.

No. 213,529. Patented Mar. 25, 1879.

No 329. Peters v. Nansmetal } p. 39

Fig. 1

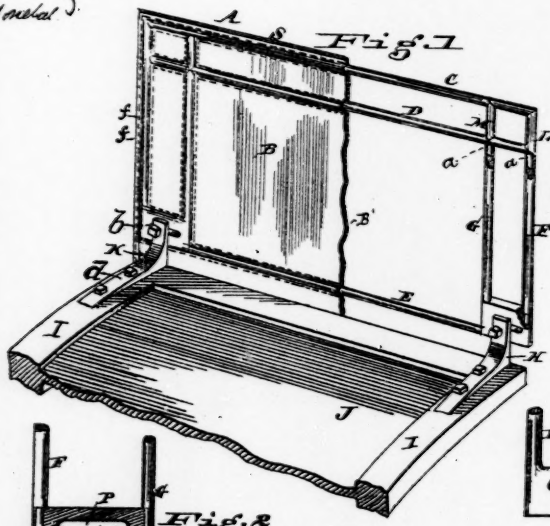


Fig. 7



Fig. 4

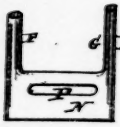


Fig. 2

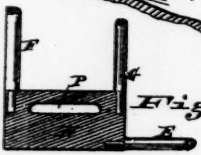


Fig. 5



Fig. 3

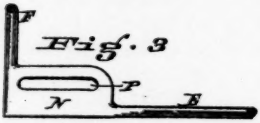
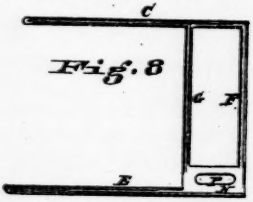


Fig. 6



Fig. 8



Attest
D. P. Kennedy
O. A. Dressel

Inventor
George M. Peters per
Wm. Hubbell Fisher
his Atty in fact

without welding, by means of mortises and tenons, or ends or extensions, and recesses to receive same, substantially as and for the purpose set forth.

GEORGE M. PETERS.

Attest: D. P. KENNEDY.
WM. R. FOX.

(Here follows diagram marked page 39.)

40 COMPLAINANT'S EXHIBIT E.

UNITED STATES PATENT OFFICE.

GEORGE M. PETERS, of Columbus, Ohio.

Vehicle Dash Frame.

Specification forming part of Reissued Letters Patent No. 9891, dated October 11, 1881. Original No. 224,792, dated February 24, 1880. Application for reissue filed June 15, 1881.

To all whom it may concern:

Be it known that I, George M. Peters, of the city of Columbus, county of Franklin and State of Ohio, have invented a certain new and useful construction of dash frames and dash feet, of which the following is a specification:

One object of my invention is a novel construction of the dash frame whereby the latter is rendered light and strong, can be manufactured with little expense, and whereby the various portions of the frame are cheaply, readily, and firmly secured together, and also whereby the dash is cheaply, quickly, and firmly connected to a permanent or detachable portion of the vehicle.

Another object of my invention is a formation of a dash foot for connecting a dash to a vehicle whereby the foot is at once strong and light and can be cheaply manufactured.

Referring to the drawings forming part of this specification, figure 1, A, B, C, and D represent a dash frame constructed in accordance with my improvements, a section through the channeled lower rail of dash, and a sectional and perspective view of my special form of bar. Fig. 2, E and F are a perspective and sectional view of a modification of the mode of attaching the bar to the lower rail of the dash where said lower rail is channeled only on one side, and G is a perspective view showing a portion of the lower rail channeled only on one side and a channeled foot of my invention attached thereto, showing manner of attaching the foot to the lower rail by a T-headed bolt. Fig. 3, H, I, Fig. 4, J K, and Fig. 5, L, M, are sectional views, showing different modes of attaching the foot to the lower rail of the dash. Fig. 6 is a perspective view showing how the extension *e'* of the upper bar may be riveted to the thin web or channeled portion of the lower rail.

H', Fig. 1, represents the lower rail of a dash frame, channeled as

shown at B. This rail is provided at either end with the slot *a* or the holes *a'* for attaching the feet to the dash frame. The lower ends of the upright bars of the frame are split and each half provided with a T head. (Shown at D, Fig. 1.) These T heads are made of the same width as the channel in the lower rail into which they fit. The two halves of this split end are separated from each other to admit the lower rail between them. The upper ends of the upright bars are provided with notches *d*, for the reception of the upper rail of the dash frame.

The mode of attaching and securing the upper bars to the lower and upper rail is as follows: The two halves of the split lower end of the upright bar are placed one on either side of the lower rail, and the T head on either half is allowed to pass the channel, as shown at *c*, Fig. 1, into which it ultimately is secured, the cleft in the end of the bar being of sufficient extent to permit it to pass. The object of this is to allow the upper end of the upright bar to pass under the top rail of the frame. When the upright bar has passed down sufficiently for this it is returned, so that the top rail fits in the notch in the upper end of the bar. The T heads on the split lower end of the bar are now directly opposite the channel in the lower rail and by a blow of the hammer can be forced together,
the T heads fitting into the channels on either side of the
41 lower rail. Dents or depressions are made near the margin of
the channel (shown at *b*, Fig. 1), forcing the edges of the channel over and against the edges of the T heads on the lower end of the upright bar, which heads are thus securely held in the channels. By a blow of the hammer upon the sides of the upper end of the rod the sides or wings of the notch *d* are battered against the top rail of the frame, and the upright bar is now securely fixed in its proper place.

The T head or heads may, when preferred, be secured to the rail, by riveting instead of by the dents or depressions above mentioned.

When preferred, one of the limbs of the notch in the upper end of the post may, in the first instance, be bent down, in which case the cleft in the lower end of the bar need not be deeper than just sufficient to allow of the ends of the lower end of the upright fitting into their respective channels in the rail. After the upright bar has straddled the latter so that the T heads fit into their respective channels the upper end of the bar can be fitted to the upper rail and the bent-down limb of said notch in the upper end of the bar then bent back, and thus the limbs of the notch be caused to embrace the sides of the upper rail.

It will be seen that by the aforesaid means the upright bars of a dash frame are easily, quickly, and cheaply attached to the top and bottom rails.

I preferably cast the upright bars of the desired shape, the material used being malleable iron, to admit of their being bent without injury when the split ends are forced together.

By constructing dash frames in the manner described much of the expense incurred in the ordinary mode of manufacture is saved. The lower rail is made broad and flat, so that the slot *a* or holes *a'*

can be made therein and leave a strong bearing for the attachment of the feet.

Should it be preferred, instead of constructing the lower rail and lower end of the upright bars as already described, the lower rail may be channeled only on one side, and the lower end of the upright bar provided with only one T head to fit in said channel, as shown in Fig. 2. Where the neck of this single T head joins the body of the bar a V-shaped notch, *e*, Fig. 2, is provided to fit over a correspondingly beveled edge of the lower rail, so that when the T head is forced into and secured in the channel in a similar manner to the securing of the bar already described the said bar is firmly secured in position.

Should it be deemed preferable, one of the arms of the T head on the lower end of the upright bars may be left off, making the head that fits into the channel an L instead of a T head.

The T portions of the arm (or arms where there are two) on the lower end of the upright bar may be omitted and the stub end of the arm or arms riveted to the channel or thin portion of the lower rail. (See Fig. 6 of the drawings.)

The notch or recess *f*, Fig. 2, permits the arm or arms provided with T or L shaped heads, or the stub end or extension *e'*, when said heads are omitted, to come in contact with the web of the channel in the lower rail or bar.

The upper end of the upright bar may be fastened in any convenient or desirable manner, although I prefer the mode herein set forth.

The wide vertical flat faces of the lower rail afford a desirable bearing for the dash foot or vehicle body (as the rail can be readily perforated for bolts or rivets, and the thick edges left above and below the perforations are first-rate bearings for said foot or body), and possess great advantages over the customary convex or oval rails, the central portion of which, being thick, renders them hard to punch, and the edges afford no flat surface for said foot or body to press against. The rail, therefore, when more or less flat
42 on one or both sides, becomes a modification of the forms of rails shown herein and possesses some of their advantages.

Irrespective of the comparative advantages derived from the bearings being flat over being otherwise shaped, the following, among other advantages, obtains, viz., that the web allows the rail or bar to be readily and quickly perforated, the thick parts, however shaped, connecting said web serving as supports or bearings for the attachment of the foot or other portion of the vehicle to which the dash is connected.

G, Fig. 2, is a perspective view of the under side of my channeled or concave foot, which is attached to the lower rail of the dash frame by a T-headed bolt, the head of the bolt fitting in the channel in the rail. A bolt having a T head so narrow as to fit within the channel is applicable for attaching the feet only where holes, instead of a slot, are used, or where the slot is of less length or width than the channel in the rail.

Fig. 3, H represents a section through the lower rail, channeled

on both sides, and the foot, with a T-headed bolt passing through a hole in the rail to secure the foot to it, the T head fitting into the channel in the rail.

Fig. 4, J is a sectional view, representing a modification, the difference being that at J the rail is represented as channeled only on one side and at H the rail is channeled on both sides.

Fig. 5, L and M represent sections through the lower rail and the foot, the foot being secured to the rail by bolts, the heads of which fit into the channel in the rail, the round slots or holes in the rail through which the bolts pass being of less diameter than the width of the channel. Should a slot of the same width as the channel in the rail be used instead of holes, a T-headed bolt having a head narrow enough to altogether fit into the channel cannot conveniently be used unless the bolt head is much longer than the slot, as the head would pass through the slot. In this case I use a bolt with a head broader than the channel. (Shown at I, Fig. 3, where the rail is represented as channeled on both sides, and at K, Fig. 4, the lower rail being represented as channeled only on one side.)

Of course, that feature of my invention which consists of the combination of channeled rail and the uprights may be used without the combination of channel and bolt with foot or vehicle, and *vice versa.*

The foot may be channeled or concaved on the opposite side to that shown and described herein, or on both sides, these forms of construction being both obvious equivalents of the one shown and described.

The depth and the length of the channel or concavity in the dash rail or foot may be varied to suit the requirements of the manufacturer.

Another advantage of that portion of my invention which relates to channeling or recessing the foot is that the same may be readily cast of malleable iron, the channeling obviating the injurious effects arising from the presence of shrunken corners in thick malleable iron castings. The channeling or recessing of the foot enables the latter to be made light and thin and to be better annealed.

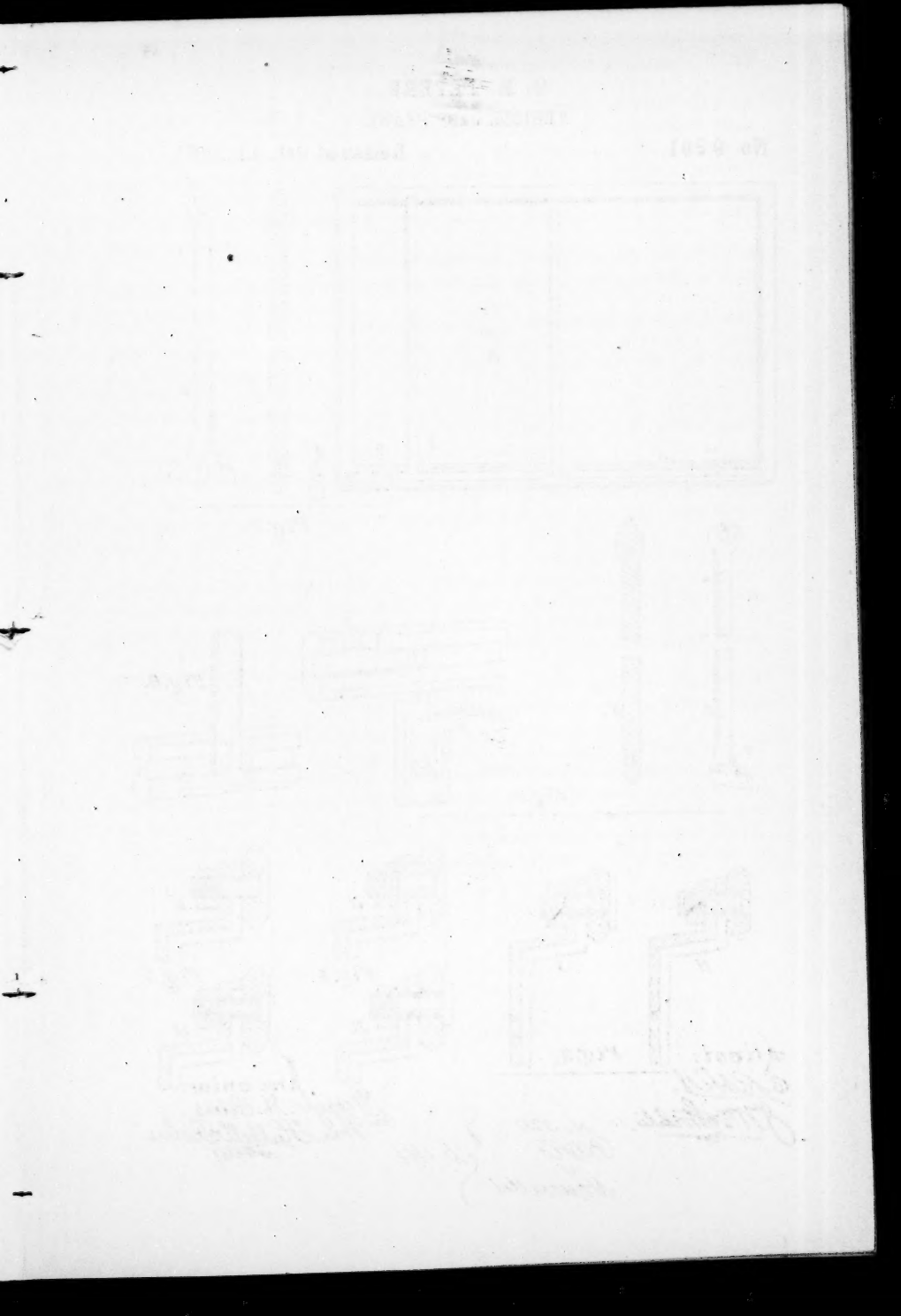
What I claim as new and of my invention, and desire to secure by letters patent, is—

1. A vehicle dash whose lower bar is provided exteriorly with a channel or recess, the metal on either side of the channel or recess affording a bearing for the dash foot or other portion of the vehicle to which the dash is connected, for the purposes specified.

2. A dash whose lower rail is composed near or at the ends of two thick portions united by an easily-perforated web, for the purposes specified.

3. A dash provided with a rail having vertically-flat sides, one or both of said sides being exteriorly channeled, substantially as and for the purposes specified.

43 4. In a dash frame, an upright having its upper end split to receive an upper cross rail or bar and its lower end provided with shoulder e and flange or extension e', substantially as and for the purposes specified.



G. M. PETERS.

VEHICLE DASH FRAME.

No. 9,891. Reissued Oct. 11, 1881

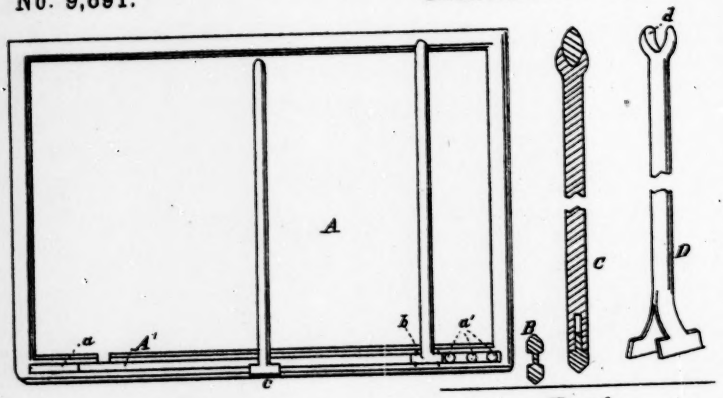


Fig. 1.

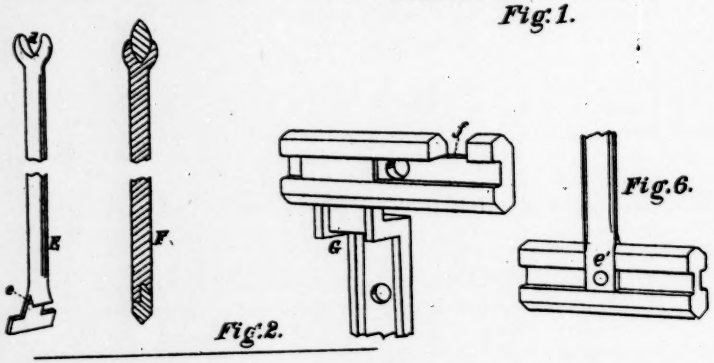


Fig. 2. Fig. 6.

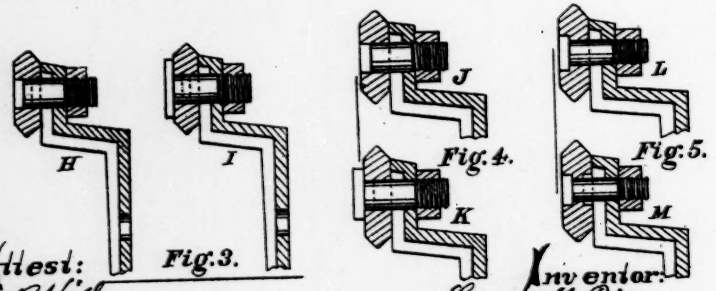


Fig. 3. Fig. 4. Fig. 5.

Attest:
E. R. Hill.
J. McStrehli.

Inventor:
George M. Peters,
per Wm. Hubbell Fisher
Atty.

No. 329.
Peters
v.
Hanson et al
} p. 44

5. In a dash frame, the upper bar having its upper end split to receive an upper cross bar or rail and its lower end provided with shoulder *e* and flange or extension *e'*, in combination with an upper cross rail or bar and a lower cross rail or bar, the latter provided with a channel and a recess, *f*, which receives the extension and allows it to lie flat against the web, substantially as and for the purposes specified.

6. In a dash frame, the combination of the channeled rail and the upright bar provided with one or more T heads, substantially as and for the purposes specified.

7. In a dash frame, the combination of the channeled rail and the upright bar provided with one or more T heads, and the holes or slots through the rails, substantially as and for the purposes specified.

8. In combination, the rail provided with one or more channels and bolt holes through the bar in the channel and a T-headed bolt, substantially as and for the purposes specified.

9. In combination, the rail provided with one or more channels and bolt holes of suitable size through the rail, the T-headed bolt, and the foot or vehicle, substantially as and for the purposes specified.

10. In combination, a dash frame and a rail provided exteriorly with one or more channels and bolt holes or slots in the channel and through the rail, said holes being of smaller diameter or width than the width of the channel, substantially as described.

11. The foot channeled on either or both sides, substantially as and for the purposes specified.

12. In combination, the foot and channeled rail provided with bolt holes or slots, and a T-headed bolt whose head is within the channel, substantially as and for the purposes specified.

13. A channeled dash frame adapted to be connected to a permanent or detachable portion of the vehicle and consisting of an exterior continuously-solid frame, provided with separable inner bars or braces terminating with said exterior frame and having a construction substantially as described, whereby they are readily attachable to said exterior frame, substantially as and for the purposes set forth.

GEORGE M. PETERS.

Attest: WM. E. JONES.
E. R. HILL.

(Here follows diagram marked page 44.)

45 COMPLAINANT'S EXHIBIT F.

UNITED STATES PATENT OFFICE.

GEORGE M. PETERS, of Columbus, Ohio.

Vehicle Dash Frame.

Specification forming part of Letters Patent No. 224,792, dated February 24, 1880; application filed May 5, 1879.

To all whom it may concern:

Be it known that I, George M. Peters, of the city of Columbus, county of Franklin and State of Ohio, have invented a certain new and useful construction of dash frames and dash feet, of which the following is a specification:

One object of my invention is a novel construction of the dash frame whereby the latter is rendered light and strong, can be manufactured with little expense, and whereby the various portions of the frame are cheaply, readily, and firmly secured together, and also whereby the dash is cheaply, quickly, and firmly connected to a permanent or detachable portion of the vehicle.

Another object of my invention is a formation of a dash foot for connecting a dash to a vehicle, whereby the foot is at once strong and light and can be cheaply manufactured.

Referring to the drawings forming a part of this specification figure 1. A, B, C, and D represent a dash frame constructed in accordance with my improvements, a section through the channeled lower rail of dash, and a sectional and perspective view of my special form of bar. Fig. 2, E and F are a perspective and sectional view of a modification of the mode of attaching the bar to the lower rail of the dash where said lower rail is channeled only on one side, and G is a perspective view showing a portion of the lower rail channeled only on one side and a channeled foot of my invention attached thereto, showing manner of attaching the foot to the lower rail by a T-headed bolt. Fig. 3, H I, Fig. 4, J K, and Fig. 5, L M are sectional views showing different modes of attaching the foot to the lower rail of the dash. Fig. 6 is a perspective view showing how the extension *e'* of the upright bar may be riveted to the thin web or channeled portion of the lower rail.

A', Fig. 1, represents the lower rail of a dash frame, channeled, as shown at B. This rail is provided at either end with the slot *a* or the holes *a'*, for attaching the feet to the dash frame. The lower ends of the upright bars of the frame are split, and each half provided with a T head. (Shown at D, Fig. 1.) These T heads are made of the same width as the channel in the lower rail into which they fit. The two halves of this split end are separated from each other to admit the lower rail between them. The upper ends of the upright bars are provided with notches *d* for the reception of the upper rail of the dash frame.

The mode of attaching and securing the upright bars to the lower

and upper rails is as follows: The two halves of the split lower end of the upright bar are placed one on either side of the lower rail, and the T head on either half is allowed to pass the channel, as shown at *c*, Fig. 1, into which it ultimately is secured, the cleft in the end of the bar being of sufficient extent to permit it to pass. The object of this is to allow the upper end of the upright bar to pass under the top rail of the frame. When the upright bar has passed down sufficiently for this it is returned so that the top rail fits into the notch in the upper end of the bar. The T heads on the split lower end of the bar are now directly opposite the channel in the lower rail, and by
46 a blow of the hammer can be forced together, the T heads fitting into the channels on either side of the lower rail. Dents or depressions are made near the margin of the channel (shown at *b*, Fig. 1), forcing the edges of the channel over and against the edges of the T heads on the lower end of the upright bar, which heads are thus securely held in the channels. By a blow of the hammer upon the sides of the upper end of the rod the sides or wings of the notch *d* are battered against the top rail of the frame, and the upright bar is now securely fixed in its proper place.

The T head or heads may, when preferred, be secured to the rail by riveting, instead of by the dents or depressions above mentioned.

When preferred, one of the limbs of the notch in the upper end of the post may, in the first instance, be bent down, in which case the cleft in the lower end of the bar need not be deeper than just sufficient to allow of the ends of the lower end of the upright fitting into their respective channels in the rail. After the upright bar has straddled the latter so that the T heads fit into their respective channels the upper end of the bar can be fitted to the upper rail, and the bent-down limb of said notch in the upper end of the bar then bent back, and thus the limbs of the notch be caused to embrace the sides of the upper rail.

It will be seen that by the aforesaid means the upright bars of a dash frame are easily, quickly, and cheaply attached to the top and bottom rails.

I preferably cast the upright bars of the desired shape, the material used being malleable iron, to admit of their being bent without injury when the split ends are forced together.

By constructing dash frames in the manner described much of the expense incurred in the ordinary mode of manufacture is saved. The lower rail is made broad and flat, so that the slot *a* or holes *a'* can be made therein and leave a strong bearing for the attachment of the feet.

Should it be preferred, instead of constructing the lower rail and lower end of the upright bars as already described, the lower rail may be channeled only on one side and the lower end of the upright bar provided with only one T head to fit in said channel, as shown in Fig. 2. Where the neck of this single T head joins the body of the bar a V-shaped notch, *e*, Fig. 2, is provided to fit over a correspondingly beveled edge of the lower rail, so that when the T head is forced into and secured in the channel in a similar manner to the

securing of the bar already described the said bar is firmly secured in position.

Should it be deemed preferable, one of the arms of the T head on the lower end of the upright bar may be left off, making the head that fits into the channel an L instead of a T head.

The T portions of the arm (or arms where there are two) on the lower end of the upright bar may be omitted and the stub end of the arm or arms riveted to the channeled or thin portion of the lower rail. (See Fig. 6 of the drawings.)

The notch or recess *f*, Fig. 2, permits the arm or arms provided with the T or L shaped heads, or the stub end of extension *e'* when said heads are omitted, to come in contact with the web of the channel in the lower rail or bar.

The upper end of the upright bar may be fastened in any convenient or desirable manner, although I prefer the mode herein set forth.

The wide vertical flat faces of the lower rail afford a desirable bearing for the dash foot or vehicle body (as the rail can be readily perforated for bolts or rivets, and the thick edges left above and below the perforations are first-rate bearings for said foot or body) and possess great advantages over the customary convex or oval rails, the central portion of which being thick renders them hard to punch, and the edges afford no flat surface for said foot or body to
47 press against. The rail, therefore, when more or less flat on one or both sides, becomes a modification of the forms of rail shown herein, and possesses some of their advantages.

G, Fig. 2, is a perspective view of the under side of my channeled or concave foot, which is attached to the lower rail of the dash frame by a T-headed bolt, the head of the bolt fitting in the channel in the rail. A bolt having a T-head so narrow as to fit within the channel is applicable for attaching the feet only where holes instead of a slot is used, or where the slot is of less length or width than the channel in the rail.

Fig. 3, H represents a section through the lower rail, channeled on both sides, and the foot, with a T-headed bolt passing through a hole in the rail to secure the foot to it, the T-head fitting into the channel in the rail.

Fig. 4, J is a sectional view, representing a modification, the difference being that at J the rail is represented as channeled only on one side, and at H the rail is channeled on both sides.

Fig. 5, L and M represent sections through the lower rail and the foot, the foot being secured to the rail by bolts, the heads of which fit into the channel in the rail, the round holes or slots in the rail through which the bolts pass being of less diameter than the width of the channel. Should a slot of the same width as the channel in the rail be used instead of holes, a T-headed bolt having a head narrow enough to altogether fit into the channel cannot conveniently be used unless the bolt head is much longer than the slot, as the head would pass through the slot. In this case I use a bolt with a head broader than the channel. (Shown at I, Fig. 3, where the rail

is represented as channeled on both sides, and at K, Fig. 4, the lower rail being represented as channeled only on one side.)

Of course, that feature of my invention which consists of the combination of channeled rail and the uprights may be used without the combination of channel and bolt with foot or vehicle, and *vice versa*.

The foot may be channeled or concaved on the opposite side to that shown and described herein, or on both sides, these forms of construction being both obvious equivalents of the one shown and described.

The depth and the length of the channel or concavity in the dash rail or foot may be varied to suit the requirements of the manufacturer.

Another advantage of that portion of my invention which relates to channeling or recessing the foot is that the same may be readily cast of malleable iron, the channeling obviating the injurious effects arising from the presence of shrunken corners in thick malleable iron castings. The channeling or recessing of the foot enables the latter to be made light and thin and to be better annealed.

What I claim as new and of my invention is—

1. A dash provided with a rail having vertically-flat sides, one or both of said sides being exteriorly channeled, substantially as and for the purposes specified.

2. In a dash frame, an upright having its upper end split to receive an upper cross rail or bar and its lower end provided with shoulder *e* and flange or extension *e'*, substantially as and for the purposes specified.

3. In a dash frame, the upright bar having its upper end split to receive an upper cross bar or rail and its lower end provided with shoulder *e* and flange or extension *e'*, in combination with an upper cross rail or bar, the latter provided with a channel and a recess, *f*, which receives the extension and allows it to lie flat against the web, substantially as and for the purposes specified.

4. In a dash frame, the combination of the channeled rail and the upright bar provided with one or more T-heads, substantially as and for the purposes specified.

5. In a dash frame, the combination of the channeled rail
48 and the upright bar provided with one or more T-heads, and the holes or slots through the rails, substantially as and for the purposes specified.

6. In combination, the rail provided with one or more channels and bolt holes through the bar in the channel, and a T-headed bolt, substantially as and for the purposes specified.

7. In combination, the rail provided with one or more channels and bolt holes of suitable size through the rail, the T-headed bolt, and the foot or vehicle, substantially as and for the purposes specified.

8. In combination, a dash frame and a rail provided exteriorly with one or more channels and bolt holes or slots in the channel and through the rail, said holes being of smaller diameter or width than the width of the channel, substantially as described.

9. The foot, channeled on either or both sides, substantially as and for the purposes specified.

10. In combination, the foot and channeled rail provided with bolt holes or slots and a T-headed bolt whose head is within the channel, substantially as and for the purposes specified.

11. A channeled dash frame adapted to be connected to a permanent or detachable portion of the vehicle and consisting of an exterior continuously-solid frame provided with separable inner bars or braces terminating with said exterior frame and having a construction substantially as described, whereby they are readily attachable to said exterior frame, substantially as and for the purposes set forth.

GEORGE M. PETERS.

Attest: F. P. JENKINS.
OSCAR G. PETERS.

(Here follows diagram marked p. 49.)

50 *Testimony.*

GEORGE M. PETERS
vs.
JULIUS A. HANSON and CORTLAND C. VAN CAMP. } In Equity. No. 7367.

The defendants will take notice that the complainant will examine witnesses in the above-named cause, under the 67th rule in equity as amended, before Eugene N. Elliott, Esq., notary public and acting special examiner, at rooms Nos. 40 and 41, Astor House, in New York city, New York, on Tuesday, December the 15th, 1882, beginning said examination at 9 o'clock a. m. of said day and continuing from day to day until completed.

Cincinnati, Ohio, Dec. 8, 1882.

WM. HUBBELL FISHER AND
JASON W. FIRESTONE,
Solicitors for Complainant.

Service of a copy of the above notice is hereby acknowledged this 8th day of December, A. D. 1882.

STEM & PECK,
Solicitors for Defendants.

United States Circuit Court for the District of Indiana. In Equity.

GEORGE M. PETERS
vs.
JULIUS A. HANSON and CORTLAND C. VAN CAMP.

Testimony taken on behalf of the complainant, under the 67th rule of the Supreme Court of the United States as amended, before Eugene N. Elliot, Esq., notary public and acting special examiner of the city and county of New York.

NEW YORK, *December* 15, 1882.

Parties met pursuant to notice at the office of Eugene N. Elliot,

G. M. PETERS.
Vehicle Dash Frame.

No. 224,792. Patented Feb. 24, 1880.

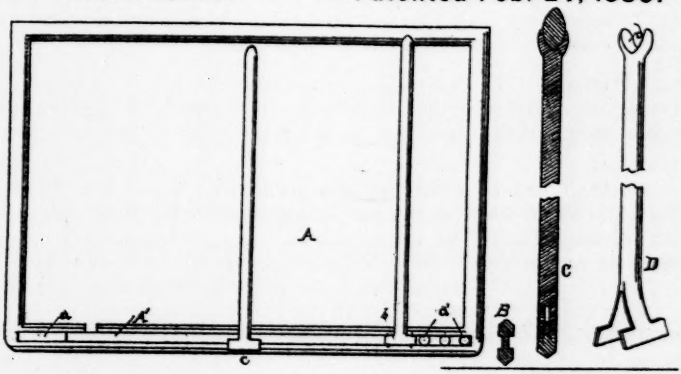


Fig. 1.

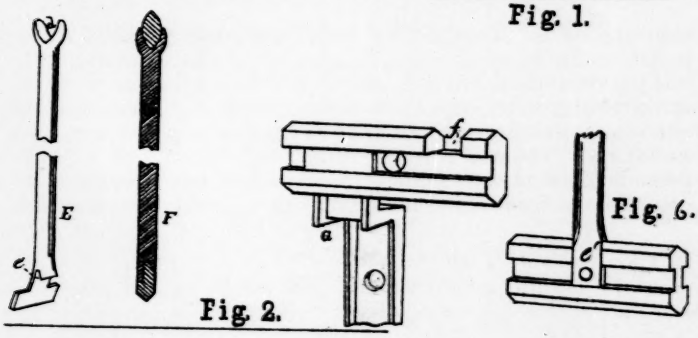


Fig. 2.

Fig. 6.

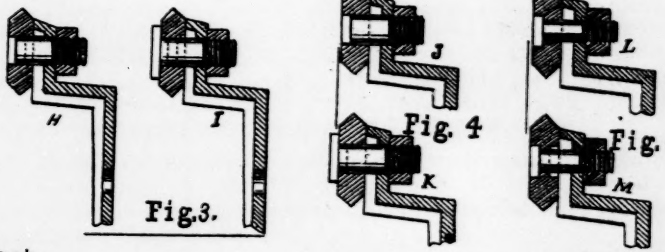


Fig. 3.

Fig. 4

Fig. 5.

Attest.
P. H. Bosworth No. 329.
E. R. Hubbell. Peters
v.
Wandmedal.
p. 49

Inventor.
George M. Peters
per Wm. Hubbell Fisher
Atty

Esq., Nos. 40 and 41, Astor House, New York city, on Friday, December 15, 1882.

Present: Jason W. Firestone, Esq., of counsel for the complainant.

Testimony of J. Boyd Eliot.

J. BOYD ELIOT, a witness called on behalf of the complainant, having been duly sworn, in answer to interrogatories propounded by Mr. FIRESTONE, of counsel for complainant, doth depose and say as follows:

Question 1. State your name, age, residence, and occupation.

Answer. J. Boyd Eliot; age, 55; residence, New York city; occupation, mechanical engineer and solicitor of patents, and for more than 25 years have been much occupied in testifying as an expert in patent cases before the United States court.

Q. 2. What experience, if any, have you had in acting as an expert in cases in which the construction of vehicles and the various portions of such structures were involved as matters of controversy?

51 A. During the practice of my profession as an engineer and also as a solicitor of patents I have frequently been called upon to make examinations into the state of the art concerning the various devices used in the manufacture of vehicles of various kinds and for various purposes, and have also made examinations into the state of the art concerning the construction and mode of operation of such structures, and have also at different times testified as an expert in cases in which the peculiar devices involved in this controversy have been the chief subject of litigation.

Counsel for complainant offers in evidence a certified copy of United States letters patent No. 213,529, dated March 25, 1879, granted to George M. Peters for "improvement in vehicle dashes," and the same is marked Complainant's Exhibit D; E. N. E., Ex'r.

Complainant's counsel also offers in evidence a certified copy of reissued letters patent No. 9891, dated October 11th, 1881, granted to George M. Peters for a vehicle dash frame, and the same is marked Complainant's Exhibit E; E. N. E., Ex'r.

Also a certified copy of the original of the said patent granted to George M. Peters, dated February 24, 1880, No. 224,792, and the same is marked Complainant's Exhibit F; E. N. E., Ex'r.

Q. 3. Have you examined and do you understand the United States letters patent No. 213,529, dated March 25, 1879, granted to George M. Peters for improvement in vehicle dashes, and marked Complainant's Exhibit D?

A. I have frequently examined the said patent and believe I understand the invention therein set forth.

Q. 4. Have you examined and do you understand the reissued letters patent No. 9891, dated October 11, 1881, granted to George M. Peters for a "vehicle dash frame," and also the original of said patent, No. 224,792, dated February 24, 1880, the same being respectively marked Exhibits E and F?

A. I have frequently examined both of said patents and believe that I understand the invention therein set forth.

Q. 5. Please examine the complainant's exhibits, which are the defendants' dashes and feet connected therewith, stipulated in this case and marked Complainant's Exhibit "Dash A," "Feet A;" "Dash B," "Feet B;" "Dash C" and "Feet C," in the cases of George M. Peters *vs.* J. A. Hanson *et al.*, in equity, No. 7367, United States circuit court, district of Indiana, and state whether you understand their construction and, if yes, please compare the said devices with the invention specified and claimed in the patent No. 213,529, and marked Complainant's Exhibit D in this case, and especially with reference to the first, second, third, and fourth claims thereof, and state wherein they resemble or differ, if at all, and give your reasons for any opinion you may express.

A. I have examined the several exhibits referred to and believe that I understand their construction and the method of connecting them with the vehicles with which they are intended to be used, and I have also compared the several exhibits with the invention specified and claimed in the said patent, Complainant's Exhibit D; and I have also compared the allegations of the defendants in their answer to this case concerning the said several exhibits or dashes and feet like them, and as I understand the subject I find in each and all of the said exhibits the several devices as specified in the said first, second, third, and fourth claims of the said patent, and I find that they exist in such form as to be combined and adapted for precisely the same purpose and in the same manner as set forth in the complainant's patent, and my reasons for such opinion are as follows: One of the prominent points of the invention, as set
52 forth in said patent, consists in so constructing the dash and the feet which support it upon the vehicle that the feet may be laterally adjustable—that is, adjustable in the direction of the length of the dash, so as to give the required variation, according to the varying widths of the bodies of the vehicles upon which the dashes are to be mounted or attached. In the nature or recital of the invention I find the specification says that "it relates, secondly, to the attachment of the dash to the vehicle, and this part of my invention renders the dash capable of attachment to vehicles of different widths, so that it can be sold as an article of manufacture for application to the vehicle by the purchaser." One of the means by which such a result is accomplished I find set forth in the following language:

"I construct the frame and the foot H so that by lateral adjustment in relation to each other the desired connection to bodies of different widths may be effected. The frame may be varied in construction to effect this result. Thus, in figures 1 and 2, the frame has a wide bearing piece, N, of any desired length, with a slot to receive the fastenings of the foot or attachment H, by which the dash and body of the vehicle are connected adjustably, so that within the limits of the adjustment the foot secured to the dash may find its bearings on bodies of various widths."

And I also find, concerning the construction of the feet, the following language:

"The foot may be of any desired shape, being shown with two branches, *b d*, one bolted or otherwise secured to the dash and the other to the body, I, of the vehicle."

From which language, taken in connection with the provision last referred to, I gather the information that this part of the invention consists simply and clearly in providing, first, a wide bearing surface upon the dash, or such a surface as will serve as a supporting element to the dash; second, a longitudinal slot, either on the dash or in the feet, which are evident equivalents one for the other; thirdly, a foot provided with a bearing surface to correspond with the bearing surface on the dash, and a hole or slot in it to correspond with the hole or slot in the dash; fourth, a screw bolt to attach the parts together, which, of course, is accomplished by extending said bolt through the hole in the dash and the hole in the foot, and thus permit the bolt to be arranged at any required point of adjustment corresponding to the holes, either in the dash or in the foot, or in both, according to the required space.

Now, on comparing the devices represented in the defendants' dashes, and which are marked, respectively, Dashes A, B, C, with their corresponding feet, I find substantially the same four elements, constructed in such a manner as that they may be combined, and are manifestly adapted for precisely the same purpose or purposes as the four elements just above enumerated by me as existing in the complainant's patent and as specified in the four first claims thereof—that is to say, I find in each of the complainant's exhibits that the dash frames are framed with the bottom bar or rail considerably wider than any other portion of the dash frame, evidently for the express purpose of giving it strength and permanence, for supporting the dash itself, and also for the purpose of attaching it to the feet or devices that are to connect it with the body of the vehicle, and such bars in each of the several exhibits are formed of what are usually termed "channel bars"—that is, a bar of metal in which there is a web between the two outer edges formed of the same material, and which is much thinner than the portions of the bar at the outer edges. In other words, it is similar to the ordinary forms of I and H beams, well known in the various departments of the manufacture of beams for supporting buildings, bridges, and similar structures, and the said lower member of each one of these dashes of the defendants consists of substantially such "channel bars" or
53 bars of metal that are much wider than the same amount of metal would be having the same distance between their bearing surfaces in cross-sections and without reference to their intermediate webs.

And consequently I find in each of the several exhibits that the lower member of the dash frame is formed of a peculiarly constructed supporting member—in this case, specifically and plainly, a "channel bar," and which has its bearing or surface support of such distance as to substantially, to all intents and purposes, constitute a broad, flat surface on the lower part of the dash, and which I regard as the

substantial equivalent for the broad supporting surface shown and described in the complainant's exhibit No. 213,529; and I may here remark, in coming to this conclusion, that the state of the art reveals the fact that dashes for vehicles were made with separable feet prior to the date of the invention, but that I am not aware that any dashes were provided with any members or portions of their frame so constructed as that there could be a lateral adjustment or any adjustment by which the feet could be adapted for narrower or wider bodies of vehicles prior to the date of this patent, and, therefore, in my examination into the state of the art on this subject, I find that the advantages to be derived from this combination are set forth in this patent in the following language:

"By the above-described means the dashes may be furnished to the trade as independent articles of manufacture, as the foot may be fitted to the vehicle in the process of construction or afterwards, and the dash secured without altering or moving it. For the like reason the feet adapted to vehicles and dashes may be sold separately."

Which language I regard as equally applicable to both the defendants' devices as represented in complainant's exhibits and as represented in complainant's patent.

In coming to this conclusion I have considered the fact that the flat surface of the dash, or that which is called the "flat bearing surface," as represented in the drawings of the patent, is not extended the whole length of the dash, as is the case in the channel bars or rails represented in the defendants' dashes, but this I do not regard as constituting any material or substantial difference, as I find in describing the "flat bearing surface" for receiving the widened surface of the feet the specification of the complainant's patent says "it may be of any desired length"—that is to say, "the adjustment of the dash and foot is not necessarily limited to the mode described; for instance, it may be effected by means of a series of holes affording a means of adjusting the foot at different points." From which language it is evident that any kind of adjustment, either by a series of holes or by a lengthened slot, either in the dash frame or in the feet, will accomplish the purpose intended in said patent.

Now, in referring to these exhibits, I see that some of the bottom rails have the holes made in the form of slots for the evident purpose of adjustment in the direction of the length of said bar, and some have holes made near the end, as, for example, Complainant's Exhibit C, and in one instance I notice that the feet are made with oval-shaped openings, so that they may be made adjustable. Consequently I come to the conclusion that the principle of adjustability is clearly set forth in each and all of the several exhibits of the complainant's, and as compared with the specification and claims in the said patent, and so referred to in the first, second, third, and fourth claims thereof, which are as follows:

First. "The combination of a dash and laterally-adjustable attachments, whereby the same may be connected to vehicles of different widths, substantially as set forth," which language, I understand,

54 applies broadly to the principle of adjustability between the dash and its attachments, whether the adjustable element be made on the dash or on the attachments or on both, provided they enable the parts to be attached to vehicles of different widths. The second claim is "A dash or dash frame having slots or openings whereby attachments may be made at different points, substantially as and for the purpose set forth," which construction, as I understand the subject, is involved in the combination of the first claim, but is specifically limited to the dash or dash frame itself, and does not include the attachments—that is to say, it pertains to the dash or dash frame when provided with slots or openings by which it may be attached to feet of different widths apart, and consequently would include, in my opinion, a dash or dash frame of that character, whether it was ever applied to a vehicle or not. The third claim is for "a dash provided with bearings, having slots or openings substantially as and for the purposes specified," which, as I understand it, is an article of manufacture that is embodied in the first and second claims, as already explained by me, but has also the additional peculiarity of a bearing surface against which the corresponding surfaces of the feet are to rest, and by which it will, in addition to the bolts, be supported upon the feet; but in this case, as in the case of the second claim, I do not consider that it involves anything more than the dash provided with such bearing surfaces, and through which slots or openings are made, and it is not necessary that it should be attached to the vehicle in order to make the combination therein specified.

The fourth claim is for "a dash frame provided with bearings arranged to strengthen the frame in those parts whereby the dash is to be connected to the laterally-adjustable feet or to the vehicle," which, as I understand, embodies the same dash frame as is specified in the second and third claims, and which includes in the claim both or all of the specific devices enumerated in the second and third claims, and may or may not include the combination of the laterally-adjustable foot—that is to say, it may not be attached to the feet, as I understand the meaning of the said claim.

And here I may remark in this connection that, although these feet in these several devices are not directly attached to the dashes, except in the case of Exhibit A, I find the several parts all so constructed as to be easily combined together, and are no doubt intended for such purpose; and I also understand from the allegations of the defendants in their answer that they admit such construction and for such purpose as set forth in complainant's patent.

Q. 6. Now, make a similar comparison between the complainant's exhibits of the defendants' dashes and their corresponding feet with the invention specified and claimed in the reissued letters patent No. 9891, Complainant's Exhibit E in this case, and state whether they resemble or differ, if at all, having reference specially to the first, second, and third claims of said reissue, and give your reasons for any opinion you may express; and in making your answer you may also compare the said reissue with the original patent No. 224,792, and which is marked "Complainant's Exhibit F" in this case.

A. I have made the several comparisons called for in the question and I find in each of the defendants' exhibits—that is, the dashers marked A, B, and C—such a construction of the lower rails of said dashes as are specified and claimed in the first, second, and third claims of the said reissued patent—that is to say, I find in each of said exhibits "a vehicle dash whose lower bar is provided exteriorly with a channel or recess, the metal on either side of the channel or recess affording a bearing for the dash foot," substantially as specified in the first claim of the said reissue patent.

Second. I find in each of the said exhibits a dash whose lower rail is composed, not only at the ends, but also between the ends or its entire length, of "two thick partitions" united by a thin web, which may be "easily perforated," substantially as specified in the second claim of the said patent.

Third. I find in each of said exhibits a dash provided with a rail having substantially "flat sides" or bearing surfaces in a vertical plane, both of said sides being exteriorly channeled, substantially as specified in the third claim of said patent.

Now, in forming these opinions or coming to these conclusions concerning the relationship of these devices to those specified in the said three claims I have not only carefully examined the said reissued patent, but I have also compared it with the original specification of complainant's patent No. 224,792, upon which the reissue is obtained, and I find that the language is the same in both specifications throughout, except the first and second claims and the paragraph setting forth the advantage in the reissue and what begins at the sixty-sixth folio, page 2, bottom line, and the words "irrespective of the comparative advantages," etc., and ends with the words "to which the dash is connected," but the descriptive portion and the drawings in both patents are the same word for word.

I also find that the invention pertains to the construction of a vehicle dash frame itself, by which it may be not only easily and cheaply and quickly made, but may also be rendered very light and strong, and the second portion of the invention has reference to the methods of attaching the feet for supporting it upon the vehicle; but the specific and essential characteristic of the invention as embodied in the first, second, and third claims have direct reference to the construction of the lower rail by which the dash is supported upon the feet and through them upon the vehicle. This characteristic consists in forming such lower rail or lower member of the dash frame itself of what is termed in the arts the "channel bar," or its equivalent, which may have a channel or groove extending its entire length, and either on one or both sides, and which is made for the express purpose of making the rail stronger in the direction of its width, in proportion to the same amount of metal, than could be done without such channel or channels. In other words, the two outer edges of the bar are thicker than the web or portion of metal connecting them, thereby disposing the metal or so arranging it in the construction of the bar as to give the greatest possible degree of strength with the least amount of weight, and the drawings in the said patent represent the said lower rails found with a channel on

one side, and also with channels on both sides; and in referring to the drawings the specification says:

"'A,' Fig. 1, represents the lower rail of a dash frame, channeled as shown at 'B.' This rail is provided at either end with a slot, *a*, or the holes *a'* for attaching the feet to the dash frame." And in speaking of the advantages of such a construction the specification says: "By constructing dash frames in the manner described much of the expense incurred in the ordinary mode of manufacture is saved. The lower rail is made broad and flat so that the slot *a* or holes *a'* can be made therein and leave a strong bearing for the attachment of the feet."

And then again I find the specification says: "The wide, vertical, flat face of the lower rail affords a desirable bearing for the dash foot or vehicle body (as the rail can be readily perforated for bolts or rivets, and the thick edges left above and below the perforations are first-rate bearings for said foot or body), and possesses great advantages over the customary convex or oval rails, the central portion of which, being thick, renders them hard to punch, and the edges afford no flat surface for said foot or body to press against. The rail, therefore, when more or less flat on one or both sides, becomes a modification of the forms of rail shown herein, and possesses some of their advantages."

56 Now, as I have already said in speaking of the defendants' dashes, Complainant's Exhibits A, B, and C, I find they are formed or provided with just such "channel bars," or bars that are recessed so as to form thick portions on the upper and lower edges, and with their webs between such thick portions, either by making the lower rail very strong in the direction of its width and much lighter than would be the case if the bottom rail were made of a flat bar of the same width, and which thereby furnishes a "broad bearing surface," as I have already explained in speaking of the previous patent, for the feet to rest against, and at the same time provides a thin web between the two thick portions at or near the outer ends or edges, which may be easily perforated for the purpose of attaching the feet at any required point after the frame or dash is completed and is ready to be fitted upon the vehicle.

In the case of the defendants' dash, Complainant's Exhibit B, I find that the thick portions of the rail are considerably more flattened than the corresponding portions in the other two exhibits, so that, in my opinion, the sides of the bottom rail in that exhibit would conform precisely to the language used in the third claim of the said reissued patent, and which is precisely the same language as was used in the first claim of the original—that is, "a bar having vertical flat sides;" but, for that matter, I regard any of the devices as coming substantially within the meaning of said terms, for the reason that the upper and lower members of the said rail, when placed in combination with other parts of the dash, as represented in the complainant's patent and as also shown in the defendants' dashes, have their bearing surfaces so arranged as to be in a vertical plane and with bearing points at considerable distances apart, so that

the same or a better effect would be obtained than if the said rails were formed wholly with flat sides.

Or, to illustrate my understanding of said claims, suppose a workman were to take a bar for the bottom rail of said dashes with both of its sides perfectly flat, and were then to remove a portion of the metal from one or both of said sides by a round-ended tool, either by forming channels, as set forth in the said patent, I would not regard it as making any substantial or patentable difference as to the extent to which said metal is removed, provided the outer edges or portions near the outer edge were left the original thickness of the bar, with a thin web between the two which could be easily perforated, and by which bearing surfaces for the feet were left to such an extent as to support the rail in a vertical position upon the feet.

Therefore I regard the language of the first claim of the said patent as more specific or limited in its character than the third claim, as it has direct reference to merely one channel or recess on one side and a bearing surface to a sufficient extent to afford a bearing for the dash feet, whereas the third claim may embrace not only the vertical sides, but two channels, and with surfaces for supporting the feet, while the second claim has direct reference to the thick portions for bearing surfaces for the feet, with an easily-perforated web between the two, and which, as I understand the subject, may be formed in any manner, either by hammering, as by dies, or rolling or planing or strengthening the web by ribs on each side, or planing out the middle, as I have already suggested in the last paragraph.

I may here remark that, although I do not understand that either of the said claims necessarily involve the combination of the feet with the rail, yet I find in each of said exhibits holes in the webs of the said lower rails through which bolts may be passed for the purpose of clamping the feet upon the sides of the dash. In the Exhibits A and B the said holes are of considerable length, corresponding to the slots shown at *a* in Fig. 1 of the drawing in complainant's patent, Exhibit E. In defendants' dash, Exhibit C, two
57 holes are perforated through the web for the adjustment of the bolt for the attachment of the feet, corresponding to the holes shown at *a* in Fig. 1 of the said complainant's patent.

Consequently I regard said dashes as not only embodying the invention distinctly specified in the said first three claims, but as corresponding substantially to the invention specified in the tenth claim of said reissue, and which is the same as the eighth claim of the original, and which is, "in combination, a dash frame and a rail provided exteriorly with one or more channels and bolt holes or slots in the channels and through the rail, said holes being of smaller diameter or width than the width of the channel, substantially as described."

J. BOYD ELIOT.

Subscribed and sworn to before me this 18th day of December, A. D. 1882.

EUGENE N. ELIOT,
Notary Public and Special Examiner, New York Co

STATE OF NEW YORK, }
County of New York, } ss:

I, Eugene N. Eliot, a notary public within and for said county, selecteda — greed special examiner under the 67th rule in equity as amended, do hereby certify that the foregoing examination was had at the time and place agreed upon by counsel pursuant to the annexed notice and the further stipulation already made in said suit, said examination beginning on December 15, 1882, and being adjourned from time to time until the same was finished, as appears above.

I further certify that at the same time and place I was attended by the counsel aforesaid, and was attended by Boyd Eliot, a witness produced on behalf of the complainant, he being of sound mind and lawful age, and that said witness, previously to the commencement of his deposition, was by me cautioned and solemnly sworn to testify to the truth, the whole truth, and nothing but the truth, and the deposition hereinbefore appearing was reduced to writing in the presence of and read over by me to said witness, and was subscribed by said witness in my presence, and the exhibits referred to in said deposition were introduced into said evidence.

I further certify that I am not counsel or attorney nor related to either of said parties to this case, nor in any manner interested in the result, and that the fees for taking this deposition, amounting to $——, have been paid by complainant.

In testimony whereof I have hereto set my hand and affixed my notarial seal this — day of ——, A. D. 1882.

[SEAL.] EUGENE N. ELIOT,
Notary Public in and for the County of New York and State of New York, and Special Examiner.

Circuit Court of the United States for the District of Indiana. In Equity.

GEORGE M. PETERS
vs.
JULIUS A. HANSON and CORTLAND C. VAN CAMP. } No. 7367.

Depositions of W. C. Ewing and Edwin H. Mooney, witnesses taken before me, Henry F. Guerin, notary public in and for the county of Franklin, Ohio, and acting special examiner, in a cause pending in the circuit court of the United States, district of Indiana, wherein George M. Peters is complainant and Julius A. Hanson and Cortland C. Van Camp are respondents, pursuant to the annexed notice, at the time and place therein mentioned, to be read in behalf of the complainant on the time of the aforesaid cause.

[NOTARIAL SEAL.]

Present: J. W. Firestone, attorney for George M. Peters, and Mr. Peck, attorney for Julius A. Hanson and Cortland C. Van Camp.

58 *Testimony of W. C. Ewing.*

W. C. EWING, being duly sworn, deposes and says as follows:

Question 1. State your name, age, residence, and occupation.

Answer. My name is W. C. Ewing; age, 28 years; residence, Columbus, Ohio; am traveling salesman for the Peters Dash Company and Columbus Buggy Company.

Q. 2. Who compose the firm of the Peters Dash Company and Columbus Buggy Company?

A. Geo. M. Peters, C. D. Firestone, and O. G. Peters.

Q. 3. How long have you been in the employ of the above-named firm?

A. Four years and a half. I went to work on July 1, 1878.

Q. 4. Are you acquainted with the defendants, Julius A. Hanson and Cortland C. Van Camp, in this action?

A. Not with Mr. Van Camp; I know Mr. Hanson.

Q. 5. Did you ever have a conversation or conversations with the defendants, or either of them, about their selling dashes for vehicles other than those manufactured by the Peters Dash Company under the patents of George M. Peters? And, if so, state when said conversation or conversations occurred and what was said.

A. Yes; with Mr. Hanson at two different times that I recollect of; one about the 3d or 4th of December, 1881, the other about the 3d of January, 1882, wherein I stated to Mr. Hanson that Mr. Peters (George M. Peters) possesses valid patents and patents which, in justice to himself, he felt bound to defend and would defend, and that if they were buying other dashes which were infringing his patents they were laying themselves liable to a lawsuit and litigation for such infringements; that our people were suing other persons, and as a personal friend of Mr. Hanson's I told him these things, not desiring a lawsuit brought against him by our people; they were suing other people and I knew they would sue him, unless he quit buying dashes of other people that were infringements on our dashes. I further remarked to him at the time that if he had an "Active dash" in stock if he would let me have it I could easily show him, by cutting the leather, that it was an almost perfect duplicate of the Peters dash, as well as in the principle of its lateral adjustment. I don't remember of anything further than this and the principles involved regarding that part of the business.

Q. 6. Was there anything said in the conversation in December as to the kinds of dashes sold in the market that infringed the Peters patent?

(Objected to by Mr. Peck as leading and incompetent.)

A. Yes; it was about the same as the conversation which occurred in January. I think there was some remark made that the Champion dashes, too, as well as the Active dash, was spoken of; about the same in application as that conversation had in January.

Q. 7. Who authorized you, if anybody, to see Messrs. Hanson & Van Camp, and what were your instructions?

A. Well, my instructions or authority in filling the position as a traveling salesman came from my employers. Having to visit trade in this line, and Messrs. Hanson & Van Camp being dealers in this trade, led to instructions which would apply to any one infringing the patents of George M. Peters, either in manufacturing and selling or buying or selling dashes so infringing Mr. Peters' patents. Mr. Peters himself gave me instructions as to what issue he intended to take in regard to any he found infringing on his patents, and, of course, as an employer, to say that he would protect himself against any such infringements.

Q. 8. Then, as I understand you, you was instructed by George M. Peters and your employers to notify Messrs. Hanson & Van Camp, and others that infringed the Peters patent, of such infringements; am I correct?

59 A. Yes, sir.

Cross-examination by Mr. PECK, attorney for defendants:

X Q. 1. Over what extent of territory do you travel in selling for the companies by whom you are employed?

A. Over part of the West and part of the South. Well, I go as far west as St. Louis, and sometimes even farther; as far as Central and Western Nebraska; south, as far as New Orleans.

X Q. 2. Do you make it a practice of visiting all dealers and manufacturers of dashes in this territory?

A. All dealers I do. Manufacturers—I don't know that you find any—that is, I don't find any in the towns I visit.

(Question objected to by Mr. Firestone as incompetent and irrelevant.)

X Q. 3. Can you give the name of a single dealer not a customer of your employers whom you have not notified or warned that if they did not purchase Peters' dashes they would be sued?

A. Well, I can't make a customer buy Peters' dashes if he don't want them and has no use for them, or anybody else's dashes.

X Q. 4. That don't answer my question; I repeat it.

A. Well, I don't know that I have, because I don't know that I would have occasion to warn any one who is not using dashes.

X Q. 5. That don't answer it; again I repeat.

A. I cannot give the name of any dealer I have not warned.

Redirect examination by Mr. FIRESTONE:

Q. 1. Although you are not able, as you say, at this moment to give the name of such dealer, yet there may be thousands of them within your territory, may there not?

A. If there are I don't know them.

W. C. EWING.

Testimony of Edwin H. Mooney.

EDWIN H. MOONEY, of lawful age, being duly sworn, deposes and says as follows:

Question 1. State your name, age, residence, and occupation.

Answer. My name is Edwin H. Mooney; my age is 24 years; residence, Columbus, Ohio; am a dashmaker by occupation for the Peters Dash Company.

Q. 2. Give the nature of the business carried on by the Peters Dash Company.

A. The manufacture of dashes, fenders, buggies, and parts for the trade.

Q. 3. How do they sell their dashes?

A. They sell their dashes on the buggies they manufacture, and to the carriage and carriage hardware trade all over the United States, Canadas, and other foreign countries.

Q. 4. What is the relation of the Peters Dash Company and the Columbus Buggy Company, if you know?

A. They are one and the same firm.

Q. 5. Are you familiar with the kinds of dashes manufactured and sold by the Peters Dash Company, and do you know the number manufactured by them?

A. I am familiar with the kinds of dashes manufactured and sold and do know the number manufactured by them.

Q. 6. Please describe the principal kinds manufactured and sold by them.

A. They manufacture dashes made of iron frames, the bottom of which is channeled and slotted, covered with patent leather, similar to the drawings in reissued letters patent No. 9891, granted October 11th, 1881, granted to George M. Peters, and similar to No. 213,529, of March 25th, 1879, granted to George M. Peters.

Q. 7. Please give the number manufactured.

A. They have manufactured 500,000 dashes.

60 Q. 8. What period of time does that estimate cover?

A. From 1875 up to date.

Cross-examination by Mr. PECK:

X Q. 1. Do you mean that they began to manufacture dashes like those shown you in the drawings of dashes in the patents referred to in 1875?

A. No, sir; not like both of them.

X Q. 2. Like which of these I here show you?

A. Part of them are like or similar to both.

X Q. 3. In what respects similar?

A. In regard to the channel and slot in the bar and the channel in the foot.

X Q. 4. Were any of these dashes like those drawings you have described sold in 1875 or 1876?

A. I would not say as regards 1875 rnd 1876?

X Q. 5. Do you know whether any of them were sold in either of those years?

A. I do not.

X Q. 6. About how many were manufactured in those years?

A. 20,000 (twenty thousand).

X Q. 7. And I understand you that they were like drawings in the patents that were shown you in the respects you have mentioned?

A. I couldn't say.

X Q. 8. Don't you know how they were made?

A. I do not; in those years he speaks of.

X Q. 9. What were you doing in those years?

A. I was engaged in other business.

X Q. 10. Engaged in other business?

A. Yes.

X Q. 11. What other business?

A. Coal business.

X Q. 12. How long have you been in the employ of the Peters Dash Company or Columbus Buggy Company?

A. Over four years.

X Q. 13. Give the exact date when you commenced with them.

A. March 8th, 1878.

X Q. 14. Who told you that the Peters Dash Company had manufactured 500,000 dashes since 1875?

A. I ascertained that from records we have of the daily reports of the number manufactured, the record of which I have kept myself since the date of my connection with the Peters Dash Company.

X Q. 15. Do you know what kind of dashes they were making before you went to work for them?

A. I do not.

Redirect examination by Mr. FIRESTONE:

Q. 1. In answer to cross-question one do you mean to say that they manufactured dashes like those shown in the drawings of both of these patents?

(Mr. Firestone here hands witness copies of patents, who examines the same.)

A. No, sir.

Q. 2. Which one of the drawings do you refer to, that shows the kinds of dashes they then manufactured?

A. No. 213,529.

Q. 3. Then, as I understand you, they did not manufacture dashes similar to the drawings in 9891; am I correct?

A. Yes, sir.

Q. 4. In 1875 and 1876 do I understand you to say that they manufactured dashes similar to the drawings shown in both patents; if not, like which drawings were they?

A. Like those in 213,529.

Q. 5. Then in view of your last answer I infer that you did
61 not understand cross-question No. 3, and will ask the notary to read to you cross-questions Nos. 1, 2, and 3, and you may now state whether your answer to cross-question 3 is correct, as you now understand the question.

(Objected to by Mr. Peck as leading and improper.)

Notary here reads cross-questions 1, 2, and 3, with answers.

H. F. GUERIN, *Notary.*

A. I understood it to mean all manufactured since 1875.

EDWIN H. MOONEY.

STATE OF OHIO, *Franklin County,* } ss:

I, Henry F. Guerin, notary public in and for said county and acting special examiner, do hereby certify that W. C. Ewing and Edwin H. Mooney were by me severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed as above set forth were by me reduced to writing in the presence of the witnesses above named, respectively, and were respectively subscribed by said witnesses in my presence and were taken at the time and place in the annexed notice specified; that I am not counsel or attorney of either party or otherwise interested in the event of the suit, and that there was no adjournment during the taking of said depositions.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 30th day of December, A. D. 1882.

[SEAL.]

HENRY F. GUERIN,
Notary Public, Franklin County,
and Acting Special Examiner.

Circuit Court of the United States for the District of Indiana. In Equity.

GEORGE M. PETERS, Complainant,
vs.
JULIUS A. HANSON and CORTLAND C. VAN CAMP, Respondents. } No. 7367.

Examination of witnesses at the request of and on behalf of the complainant above named, under the 67th rule of practice for the courts of equity of the United States, in pursuance of the notice hereto attached, and subject to the stipulation herein mentioned, before me, H. F. Guerin, notary public in and for the county of Franklin, State of Ohio, and acting special examiner in the taking of these depositions.

These depositions to be taken before me, H. F. Guerin, by questions and answers.

H. F. GUERIN,
Notary Public and Acting Special Examiner.

Present: Jason W. Firestone, counsel for complainant.

Testimony of Edwin H. Mooney.

EDWIN H. MOONEY, witness produced by complainant, being first duly sworn according to law, deposes and says as follows:

Question 1. State your name, age, residence, and occupation.

Answer. My name is Edwin H. Mooney; am twenty-four years of age; residence, Columbus, Ohio.

Q. 2. Give the street and number of your residence.

A. No. 135 Lazelle avenue, Columbus, Ohio.

Q. 3. Have you the means of knowing and do you know the number of men employed by the Peters Dash Co.?

A. I have the means of knowing the number of men employed by the Peters Dash Company, and would say that in the year
62 1882 they employed from 800 to 900 employees. The number varied a little with the demand of the trade. The number employed in 1881 was about 650 to 750.

Q. 4. Have you means of knowing and do you know the extent of the works of the Peters Dash Company used in their manufacturing?

A. I have the means of knowing and do know the extent of the buildings or works used by the Peters Dash Company. First, the building on the southeast corner of Locust and Fair alleys is 62½ x 62½ feet, made of brick, and seven stories high. Second, brick building on the northwest corner of Chestnut street and Fair alley is about 70x125 feet, and six stories high. Third, two buildings fronting on High street, extending back to Fair alley 187½ feet, made of brick, are five stories high, with a frontage on High street of about 62½ feet. Fourth, a brick building on the southwest corner of Fair and Locust alleys, with a frontage on Fair alley of about 40 feet, and 150 feet deep and four stories high. Fifth, a frame building on the northwest corner of Fair and Locust alleys, with a frontage on Fair alley of about 75 or 80 feet and a depth of about 60 feet. Besides these there are several other smaller buildings.

Q. 5. When did you commence work for the Peters Dash Company?

A. March 8th, 1878.

Q. 6. In your former testimony in this case, in answer to question 5, you stated that you was familiar with the kinds of dashes manufactured and sold by the Peters Dash Company. You may now state, if you know, what kind of dashes the Peters Dash Company manufactured when you entered their employ on March 8th, 1878, and how long they continued to make that kind of a dash.

A. When I entered their employ on March 8th, 1878, the Peters Dash Company then manufactured for the trade an iron frame leather-covered dash, with a slot in the lower bar of the dash for laterally adjusting the foot of the dash, or what is known in the trade as "Peters' Slotted Dash," patented by George M. Peters, No. 213,529, dated March 25th, 1879, and continued to manufacture that kind of a dash exclusively from that time up to some time in January, 1879.

Q. 7. State, if you know, what kind of dash other than the one described the Peters Dash Company commenced manufacturing some time in January, 1879.

A. About that time Mr. Peters got up another dash, and we then commenced manufacturing it. This was an iron framed leather-covered dash, with a channel in the lower bar of the iron frame, or the dash which is known in the trade as "Peters' Patent Channel Dash," made under and substantially like the patent reissue No. 9,891, October 11th, 1881, granted to George M. Peters, and this dash having met the demands of the public better than any heretofore in the market. The Peters Dash Company have manufactured and sold about 360,000 of these dashes, and now have on hand about 40,000 of these dashes to supply the demand of their customers for the spring trade of this year.

Q. 8. What kind of foot, if you know, do the Peters Dash Company manufacture and sell with the channel bar dash they commenced manufacturing some time in January of 1879, and when did they commence manufacturing the said foot?

A. They manufacture and sell a foot made of malleable iron, made in various shapes, with the under side channeled similar to the channel foot described and claimed in letters patent reissue No. 9,891, dated October 11th, 1881, granted to George M. Peters. They have, however, not sold exclusively this channel foot with the dashes they have sold. They commenced manufacturing this channel foot soon after they commenced manufacturing the channel bar dash, or about the 1st of March, 1879.

63 Q. 9. State, if you know, how many of the channel feet the Peters Dash Company have sold since they commenced to manufacture them about March 1st, 1879.

A. They have sold about 450,000 of these feet.

Q. 10. State, if you know, whether or not the Peters Dash Company make the dashes and feet or the packages containing them with the word "patented," giving the dates and numbers of the various patents under which they are manufactured, or works and figures of like import.

A. Yes; I do know that they do so mark them, and have ever since I have been in their employ.

Q. 11. State, if you know, who the members are of the copartnership firm of the Peters Dash Company, of Columbus, Ohio.

A. They are Mr. George M. Peters, C. D. Firestone, and O. G. Peters.

Q. 12. State, if you know, whether the George M. Peters spoken of in your answer is the patentee of the patents you have referred to in your foregoing answers of this deposition.

A. He is the same George M. Peters, and is the patentee of the various dash patents under which the Peters Dash Company manufacture dashes.

Q. 13. State, if you know, what interest the said George M. Peters has in the Peters Dash Company, and how long has he had such interest.

A. He is third owner with the other two partners above named,

and they have been so associated ever since I have been in their employ.

And further this deponent says not.

EDWIN H. MOONEY.

Testimony in Rebuttal.

Circuit Court of the United States for the District of Indiana. In Equity.

GEORGE M. PETERS
vs.
JULIUS A. HANSON and CORTLAND C. VAN CAMP. } No. 7367.

Examination of witnesses on behalf of the complainant, under the 67th rule in equity as amended, before E. G. McCollum, a notary public within and for the county of St. Joseph and State of Indiana, who is hereby agreed upon as special examiner under said rule, at Mishawaka, Indiana, on this the 23d day of February, 1884, pursuant to the annexed notice for taking this deposition.

Jason W. Firestone, present on behalf of complainant, and Edward W. Rector present, representing Stem & Peck, counsel for defendants.

By request of parties it is ordered that these depositions be taken by question and answer.

Testimony of Dr. Grimes.

JAMES F. GRIMES, a witness produced on behalf of the complainant, being first duly sworn, deposeth and says, in answer to interrogatories propounded to him by J. W. FIRESTONE:

Question 1. State your name, age, occupation, and residence.

Answer. My name is James F. Grimes; my age, fifty-eight years; my occupation, a surgeon and physician, and my residence, Mishawaka, Indiana.

Q. 2. How long have you been engaged in the practice of your profession?

64 A. About thirty-five years.

Q. 3. How long have you lived in Mishawaka, Indiana, and how long have you been continuously engaged in the practice of your profession in this place?

A. Thirty-one years this coming spring.

Q. 4. Since you have resided here are you the only Dr. Grimes living in this town or vicinity, and if another Dr. Grimes had resided here or in this vicinity should you have known that fact?

A. I am the only Dr. Grimes that I know of in this county or ever has been since I came here, excepting my son, and I would have known it had there been one.

Q. 5. How old is that son, and how long has he been engaged in the practice of his profession?

A. He is thirty years old, and has been practicing with me for the last five years, more or less.

Q. 6. Did you ever know a firm in this place by the name of Wood, Eberhart & Nutt, or Wood, Eberhart & Co.?

A. I did; there was a firm here in which Wm. Wood, J. H. Eberhart, and Nutt (I don't remember his name) were engaged.

Q. 7. What was their business?

A. Manufacturing vehicles. I don't remember whether they made heavy wagons or not; they did manufacture buggies.

Q. 8. State whether or not you ever purchased a buckboard from Wood, Eberhart & Co., or Wood, Eberhart & Nutt; and, if so, describe the same.

A. No, sir; not to my knowledge.

Q. 9. When you first commenced practicing in this town and vicinity how did you attend your patients?

A. I generally went on horseback in the country; in the village, here, on foot.

Q. 10. What kind of a vehicle was the first one you owned after coming to this place, and how long did you use it, and where did you get it?

A. The first one I got was a sulky. I bought it of Messrs. Chapin & Graham; I used it several years, probably five; I can't say just how long.

Q. 11. When did you purchase this sulky?

A. I can't say positively; probably a year or two after I came here, in 1854 or 1855.

Q. 12. During the time you used this sulky did you own any other kind of a vehicle, and where did you purchase your next vehicle, from whom, and what kind was it?

A. I did. I bought a buckboard of the same parties, or at the same shop, about a year after I bought the sulky.

Q. 13. Who run this shop?

A. My impression is that it was the same parties that did before when I bought the sulky.

Q. 14. How long did you use this buckboard, and when and from whom did you purchase your next vehicle?

A. I can't tell exactly; three, four, or five years. I wore it out pretty nearly. I then purchased another buckboard of Studebaker Bros., of South Bend.

Q. 15. When did you purchase your next new vehicle, and what kind was it?

A. The next, a new buggy, I bought of Coquillard, of South Bend, about eight or nine years ago.

Q. 16. Have you the means of knowing the names of the persons living in this vicinity, and have you had means of knowing the names of persons living in this vicinity since the time you first came here?

A. I have; I have been in public business here; am pretty generally acquainted.

Q. 17. Did you ever know a man by the name of John Shank;

and, if so, is he dead or alive, where does he live, and how long have you known him?

65 A. Yes, sir; he is still living about 4½ miles southwest of Mishawaka, and I have known him ever since I came here.

Q. 18. Did you ever know another man living in this town or vicinity by the name of John Shank?

A. I did not.

Q. 19. Do you think you would have known of such a person had he lived in this town or vicinity?

A. Yes, sir.

Cross-examination by E. W. RECTOR:

X Q. 20. In what year did you buy the buckboard of Chapin & Graham?

A. I don't know exactly the year; it must have been, I think, in 1855 or 1856.

X Q. 21. Do you know Albert C. Post, who resides in the country a few miles from Mishawaka?

A. I do.

X Q. 22. How long have you known him?

A. From twenty-five to thirty years.

X Q. 23. Do you know whether Mr. Post was living in Mishiwaka at the time you bought the buckboard of Chapin & Graham; and, if so, do you know whether at that time he was in the employ of Chapin & Graham?

A. He was living here at that time, or about that time; I do not remember whether or not he was in the employ of Chapin & Graham.

X Q. 24. If he had been in the employ of Chapin & Graham at the time you bought the buckboard would you have known it?

A. Perhaps I would have known it at the time, but I do not remember it now.

X Q. 25. Then do you mean that you think Mr. Post was not in the employ of Chapin & Graham at the time you bought the buckboard, or do you mean that if you then knew he was in their employ you would probably have forgotten it by this time?

A. I mean that I do not recollect anything about it, only that he was living here about that time.

X Q. 26. Do you know what Mr. Post's occupation was at that time?

A. My impression is that he was a carriage trimmer or painter. My impression is that he was a trimmer.

X Q. 27. Was there any other firm here at that time who made carriages and other vehicles, excepting Chapin & Graham; and, if so, whom?

A. There was another firm here about that time consisting of D. Beatty and another, or others, I think; don't remember who they were. They started a small shop. I don't remember whether they made carriages or not. I bought a wagon of their house.

X Q. 28. What became of the buckboard you bought of Chapin & Graham?

A. I let one Andrew H. Long have it.

X Q. 29. When did Mr. Long get it, and do you know whether it can now be found?

A. I can't tell positively; it must have been somewhere in 1858, 1859, or 1860. I can't tell what became of it. That is the last I know of it.

X Q. 30. Was that the only vehicle you ever sold to Mr. Long?

A. Yes, sir; I do not remember any other one.

X Q. 31. Have you ever known any gentleman by the name of Shank living in this vicinity, excepting the John Shank referred to in your former examination?

A. Yes, sir.

X Q. 32. What were their names?

66 A. One was Arthur Shank, Lee Shank, Ed. Shank, and another, a brother to John, but I don't know his name.

X Q. 33. Do you know John Shank's middle name?

A. No, sir; I do not.

X Q. 34. Did you never hear of a man living in this vicinity named John A. Shank?

A. I do not remember it.

X Q. 35. Do you know whether any of the Shanks referred to by you are dead; if so, which ones, and when did they die?

A. They are all alive.

X Q. 36. Do you know whether any man by the name of Shank has died in this vicinity within the last 25 or 30 years?

A. I don't know of any, but my impression is that Mr. John Shank had a brother die a few years ago.

X Q. 37. What is the reputation of Albert C. Post for honesty, truthfulness, and integrity in this community?

(Counsel for complainant objects to this question for the reason that it is not proper cross-examination; that it is incompetent; that the witness has not qualified himself to speak as to the reputation of Mr. Post for honesty, truthfulness, and veracity.—E. G. McCollum, notary.)

A. Mr. Post and I never had any trouble personally. I don't want to answer that question if it can be avoided.

Redirect examination:

Q. 38. Did not Wood, Eberhart & Nutt manufacture buggies and other vehicles here during the time that Chapin & Graham were engaged in the same kind of business?

A. My impression is that they did.

Since reading my deposition I desire to make this explanation: It now comes to my mind that I did know one John Shank that lived in South Bend some eight or ten years ago, who is now dead, who was at that time a young man about twenty-one or twenty-two years old; I think he died some four years ago.

Q. 39. What position did he hold while living in South Bend?

A. Deputy treasurer of the county.

Q. 40. State how long ago it was that he was deputy treasurer.

A. I should judge about eight years.

Q. 41. About how old was he at that time?

A. About twenty-one or twenty-two years old.

Q. 42. Please state what kind of a dash was on the buckboard you purchased from Chapin & Graham.

A. It was a common, cheap dash, with patent-leather cover.

Q. 43. How was said dash connected to the sills or body of the buckboard?

A. The frame was a common iron one, covered with cheap patent leather. The ends of the frame came down and were bent at nearly right angles, with holes made and fastened to the body with bolts or screws. The foot of the standard or brace was a continuation of the end of the dash, coming down to the bottom of the buckboard and fastened by screws or bolts.

Recross-examination:

Q. 44. Was not this dash on buckboard wider than the body of the buckboard, as dashes usually are?

(The plaintiff's counsel objects to this question for the reason that there is no testimony showing that dashes are usually wider than the body of the buckboard.—E. G. McCollum, notary.)

A. It was not; the body of the buckboard was wider in the middle, but was narrower at the end, and then the foot of the dash
67 was set on near the edge of the board, probably one-half to three-fourths of an inch from the edge. Now, the top of that dash there was another piece of iron that was above the dash, fastened by two uprights. I don't remember just how far it was, but is far enough to fasten my lines through there.

Q. 45. Was the dash as wide as the body of the buckboard; and, if not, about how much wider was the body at the front end than the dash?

A. It lacked about an inch and a half or two inches; I can't say as to that.

Q. 46. Were the feet by which the dash was attached to the buckboard a solid continuation of the end bars of the dash, or were they welded to the ends of these bars?

A. A solid continuation; and the cross below was an oval piece of iron split at the end and passed over the uprights, and fastened either by welding or rivets, I don't now remember which.

Q. 47. Did you ever see the dash with the leather covering removed?

A. Yes, sir.

Q. 48. Was the downward continuations of the end bars of the dash which you say formed the feet, by which you say it was attached to the buckboard, the same size and weight of iron as the upper part which formed the end bar of the dash?

A. No, sir.

Q. 49. Please describe them, then.

A. They were larger, however, till they came down to the body of

the buckboard, where they turned; then they tapered smaller towards the ends.

Q. 50. Then, as I understand you, the feet and end bars were composed of one and the same piece of iron, the upper part of which was smaller and lighter, and formed the end bar of the dash, while the lower part was heavier down until it reached the buckboard, and was then narrowed in that part by which it was bolted to the buckboard.

A. It was not narrowed; it was flattened; it was the same width all the way back and was thinner at the back end than at the front.

Q. 51. At what point in this bar of iron did the enlarged part which you say formed the foot begin—that is, how far, or below the lower cross-bar of the dash?

A. Right at the cross-bar, I think.

Q. 52. Please state, as near as you can, the year in which you got this buckboard of Chapin & Graham and the year you sold it to Mr. Long.

A. I bought it somewheres between the years 1856 and 1858, and sold it some four or five years afterwards. I had it repaired two or three times.

Q. 53. Was the dash ever broken so that you had to have it repaired; and, if so, what part of it was broken and who repaired it?

A. Yes, sir; I had it recovered at one time at the shop of Henry Graham. At another time this cross-piece that I spoke of, which was split and lapped across the upright, came apart, and I had to have the dash taken apart to fasten that.

Q. 54. How long after you got the buckboard was it before you had to have this last repairing done at the shop of Henry Graham?

A. I cannot form any idea about that.

Q. 55. Do you think it was as long as two years?

A. I have no idea about it; whether six months or two years I cannot say; I simply know that it was while I owned it.

Q. 56. In what business was Henry Graham engaged at that time; is he still living here; if not, when did he move away, and where may he now be found?

A. He was in the harness business; had a little shop in Mishawaka, and I think (but am not certain) that he had a livery stable. I know that he had a stable at one time, but whether
68 at that time I can't say. He is not living here now, nor do I know where he is.

Q. 57. During the time you owned that buckboard was the dash ever broken off so that you either had to have a new dash put on or the old one put back and connected in a different manner from that which you have described it as being connected when you bought it from Chapin & Graham?

A. No, sir; it might have been broken at some time, but not so that I had to have it put back in any different manner.

Q. 58. Then I understand that when you sold the buckboard to Mr. Long the dash was attached to the body in the same manner and by the same means as when you got it?

A. Substantially so; there had been different bolts or screws that held it to the body; the feet were the same.

Q. 59. Where was Mr. Long living at the time you sold him this buckboard?

A. On the county farm of this county.

Q. 60. Was he superintendent of the county farm at the time? And, if so, state as near as you can how long he had been in that position when you sold him the buckboard.

A. He was; I cannot tell how long he had held that position.

Q. 61. Do you know how many years Mr. Long was superintendent of that farm?

A. I do not.

JAMES F. GRIMES.

Testimony of John Shank.

Also JOHN SHANK, called on behalf of the complainant, who, on being first duly sworn, deposeth as follows:

Question 1. State your name, age, residence, and occupation?

Answer. My name is John Shank; my age, 79; residence, Portage township, St. Joseph county, Indiana; and my occupation a farmer.

Q. 2. How long have you live in this vicinity?

A. About thirty-seven years.

Q. 3. During the time you have lived in this vicinity did you know a person by the name of John Shank except yourself?

A. No, sir; no old resident of that name; simply some nephews, who are young, who were named after me. That was also my father's name; he died at Indianapolis in 1860.

Q. 4. Did he ever live in this vicinity?

A. No, sir.

Q. 5. Did you purchase a vehicle of any kind from Wood, Eberhart & Nutt?

A. I bought a buggy, I don't know from whom; I think the Eberharts were concerned in it.

Q. 6. What became of that buggy?

A. My brother, Samuel Shank, came here from Indianapolis, and I sold it to him and he took it home with him.

Q. 7. Do you know what kind of a dash was on that buggy?

A. I could not describe it. I thought it was like all other dashes.

Q. 8. Do you know whether it had a wooden or iron dash?

A. No; I don't.

Q. 9. Was this the only buggy you bought of Wood, Eberhart & Nutt?

A. Yes, sir.

Q. 10. Do you know about when you bought this buggy?

A. No; I can't set any date. It was a long time ago, when I was running a brick-yard.

Cross-examined by E. W. RECTOR:

X Q. 11. How long has it been since you quit running the brick-yard?

A. It has been about ten years.

X Q. 12. Was it several years before you quit the brick
69 business when you bought the buggy?

A. Yes; I made brick several years after I bought this buggy.

X Q. 13. Did you ever hear of any other person by the name of Shank except yourself buying any kind of a buggy or vehicle in Mishawaka?

(Question objected to as immaterial and incompetent, unless limited to a purchase from Wood, Eberhart & Nutt. E. G. McCollum, Notary.)

A. No. sir.

X Q. 14. If any one by that name had bought a vehicle from Wood, Eberhart & Nutt, or any other firm in Mishawaka, would you have known it?

(Same objection as to interrogatory 13. E. G. McCollum, Notary.)

A. I suppose I would have known it if I had known the person, but I never knew of anything of that kind.

X Q. 15. Did you not know of a John Shank who lived in South Bend and died a few years ago?

A. Yes, sir.

X Q. 16. Did you ever talk to Wood, Eberhart & Nutt, or any other firm here, about buying any other vehicle than the buggy you have testified about?

(Objected to as incompetent and immaterial. E. G. McCollum, Notary.)

A. I can't recollect anything about that.

X Q. 17. Did you not sell brick to Wood, Eberhart & Nutt, to use in building their carriage factory here? and if so, please state, as near as you can, the year when you sold the brick to them?

A. I did not say anything about Nutt being in the firm. I sold Wood & Eberhart brick. I should judge twenty-five years ago. I don't know any nearer than that.

X Q. 18. Was not the buggy you got of that firm taken as part pay for the brick?

A. I suppose it was.

X Q. 19. State, as near as you can, how long it was after you sold them the brick that you got the buggy?

A. I can't say certainly, but that not over a year.

Redirect-examination:

Q. 20. Since giving your testimony-in-chief, is it not a fact that the taking of your testimony was suspended for a few moments, and Dr. Grimes recalled, and gave his testimony with regard to young John Shank who was deputy treasurer of this county?

A. It is.

Q. 21. The notary will now please read you interrogatory No. 3 and your answer thereto, and I will now ask you whether you have

any explanation to make as to your answer as there given? and if so, please explain.

A. I now remember a man by the name of John Shank who was a deputy treasurer, but he has been dead some four or five years, and I did not think of him when I testified first. He was born in Germany, as I understand, and no relation of mine.

Q. 22. At the time he died about how young was he?

A. I should judge twenty-four or twenty-five years.

JOHN SHANK.

Testimony of John H. Eberhart.

JOHN H. EBERHART, being called on behalf of the complainant, being first duly sworn, deposes and says:

Question 1. State your name, age, occupation, and residence.

Answer. My name is John H. Eberhart; my age is fifty-eight years; my occupation, a miller and farmer; my residence in Mishawaka, Indiana.

70 Q. 2. Were you a member of the firm of Wood, Eberhart & Nutt, formerly located and doing business in the town of Mishawaka, Indiana? And, if yes, state what kind of business said firm did when your connection with said firm began and when said firm commenced business; how long you were with said firm, and whether your connection with said firm was continuous during said time; when said firm quit business what your position was in said firm and your relation to the business thereof, and whether there was more than one firm of Wood, Eberhart & Nutt, or were Wood, Eberhart & Co. the same firm as Wood, Eberhart & Nutt.

A. Wood, Eberhart & Co. was the name of the firm. Nutt was the company. I was a member of that firm. The firm manufactured wagons and carriages. My connection began in the fall of 1855, and that was the time the firm began business. I remained with the firm about two years and a half. My connection with it was continuous during that time. The firm sold out the first of February, 1858. I was general superintendent. There was but the one firm of that name.

Q. 3. Was you connected with said firm during the entire time it did business, and, if so, were you general superintendent during that entire time?

A. Yes, sir; I was.

Q. 4. Are you acquainted with Albert C. Post, of Penn township, St. Joseph county, Indiana, and did he work for the firm of Wood, Eberhart & Co., and, if so, can you state how long he worked for said firm?

A. I am acquainted with Mr. Albert C. Post; he did work for that firm; he began in March, 1856, and continued until the firm quit business.

Q. 5. Are you acquainted with William Rentfrow, a blacksmith by trade, who now resides at Goshen, Indiana, and, if so, did he ever work for the firm of Wood, Eberhart & Co., when did he commence working for said firm, and when did he quit?

A. I was acquainted with Mr. Rentfrow. He worked for said firm as blacksmith. He began working for the firm about the first of November, 1856, and continued until the firm quit business.

Q. 6. What opportunities did you have for knowing the kind of word done by Wood, Eberhart & Co., and were you familiar with the construction of the dashes made by them during the time they were in business?

A. Being superintendent of the work it was my business to look after all the different branches of work done by the firm, and I was familiar with the construction of the dashes that said firm made.

Q. 7. State whether or not they (Wood, Eberhart & Co.) made any dashes having provision for lateral adjustment for the purpose of attaching them to vehicles of different widths?

A. They never did.

Q. 8. Did said firm make "dashes or dashers" fitted for the front end of the body which they were attached to and holes were drilled in the lower rod of the dash to attach the foot to them?

A. They never did.

Q. 9. Did said firm make such a dash as described in interrogatories 7 and 8 and sell the same to Dr. Grimes or apply the same to a buckboard which they sold to him?

A. They did not.

Q. 10. Did said firm make dashes with the holes drilled in the lower bar sufficient distance from the outer end to attach a foot to them, and from two to six holes in them or any holes in them, and would you have known of such fact had it been done?

A. No, sir; they did not; had they done so I would have known it.

71 Q. 11. Do you remember this incident, when a dash of the following description was made for a Dunkard: "It was a square dash with two upright bars; the feet were bolted into the dash between the two bars; there was in the first place four holes made, two at each end, probably an eighth or a sixteenth or may be a quarter of an inch apart; when we came to attach the dash to the vehicle the bolts running through the front end of the body that held the foot board on was in the way, and, in order to get it on, we had to drill another hole on the left end of the dash to the left of the other holes which had been made previously, and move the foot to the left;" and would you have known of the fact had it taken place?

A. I don't remember such a circumstance, and, had it occurred, I would be likely to have remembered it, unless, perhaps, it had occurred in my absence. I was absent two or three different times, long enough for perhaps a short job of that kind to have been done.

Q. 12. Did Wood, Eberhart & Co. ever make a dash or dashes "the bottom rail, long, square place on it for to receive one, two, or three holes, as it may be, and a foot turned up with a square corner with a hole drilled through it, one or two, as it may be, and bolted to the dash by turning up the foot to the right and one to the left?"

A. No, sir.

Q. 13. Did you or not make a dash or dashes having a hole or

several holes in the bottom rail for the purpose of connecting them to vehicles of different widths?

A. No, sir.

Q. 14. Did they ever make a dash or dashes having a slot in the lower bar for the purpose of bolting the dash foot to the dash?

A. No, sir.

Q. 15. Did you said firm ever sell a buckboard to Dr. Grimes?

A. No, sir.

Q. 16. Did your said firm sell a buggy to John Shank? And, if so, state what kind of a buggy it was, if you remember?

A. We did. I can't now say positively what kind of a buggy it was. I am quite sure it was a rockaway, standing top.

Q. 17. If the buggy you sold to John Shank was a standing top rockaway, what kind of a dash did it have on?

A. If it was a rockaway it had on a wooden dash.

Q. 18. Is the said John Shank now alive; and, if so, where does he live?

A. John Shank is alive and lives about four miles a little south of west of this place.

Q. 19. Did your said firm sell a buggy to any other John Shank than the one above referred to?

A. No, sir; I think not.

Q. 20. Is Mr. Wood, formerly of your firm, now alive?

A. No, sir.

Q. 21. When, if ever, did you first see or know of a dash or dashes having separable feet, having the feet secured to the dash by bolts and nuts?

A. I have seen them, but I can't say when I saw the first one.

Q. 22. Were you acquainted with the John Shank who was deputy treasurer six or eight years ago; if so, did Wood, Eberhart & Company sell him a buggy?

A. I was acquainted with him, but that firm never sold him a buggy.

Q. 23. Did Wood, Eberhart & Co. or Wood, Eberhart & Nutt carry on the business of manufacturing carriages after they sold out in February, 1858?

A. They did not.

Q. 24. How many fires did Wood, Eberhart & Co. run in their carriage-smith shop?

72 A. From one to three; three is the most they ever run in the carriage-smith shop.

Q. 24. Did Renfrow, while working for Wood, Eberhart & Co., make two dashes under the following circumstances: "When the trimmer was going away, and the bottom of the buck-boards were not made yet, he made two dashes right up so they could be used at any time afterwards. The two dashes were made near one size, with flat places to receive the holes with five-eight oval iron welded to it and the upper ends of the feet bent F or L shape and the F and L ends turned right and left; the end of the dash being flat space or corner about two to two and a half inches long, one to one and one-eigth inches wide, one-fourth to five-sixteenth inches thick; two or

three holes drilled in the dash, and two or three holes drilled in the upper end of each foot, and as the buck-boards were not made yet, the dashes were made with separable feet so that they would fit any width body that would be made?

A. He did not; there might have been two dashes made before the buck-boards were made; such dashes were never made in the shop by anybody.

Q. 26. I show you a drawing of complainant's patent, No. 213,529, of March 25, 1879, and referring particularly to Fig. 1, ask you to state whether Wood, Eberhart & Co. ever made a dash or dashes like or substantially like the dash shown in said drawing?

A. No, sir; they did not.

Cross-examination by respondents' counsel:

X Q. 27. In your position as superintendent of the firm of Wood, Eberhart & Co., did you personally inspect all the work that was done in the blacksmith shop, paint shop, trimming shop, and the wood-working shop of said firm, and did you see and know the construction of all the work made in those shops?

A. I inspected all the work on any new job that was turned out of any branch of the shop. I saw all the new work turned out of these shops.

X Q. 28. Did you see all the repair jobs in these shops?

A. Can't say whether I did or did not.

X Q. 29. To the best of your recollection do you think you saw all the repair jobs repaired in these shops?

A. I have no recollection about it; they may have been repaired during my absence.

X Q. 30. Were you at the shop all the time; if not, how long at a time were you absent?

A. I was not at the shop the entire time. I was absent at one time about two weeks. I think that was the only time that I was absent more than one or two days at a time.

X Q. 31. When you were absent at that time two weeks, was you away from Mishawaka, and when you were in town did you stay closely at the shop of Wood, Eberhard & Co.?

A. I was away from Mishawaka at that time; yes, sir, it was the calculation that I was to stay closely to the shop.

X Q. 32. Did the firm of Wood, Eberhart & Co. have a repository at which they kept their complete work; and, if so, did they have more than one, and how far from the shop were they located?

A. They had a repository; only one at a time; it was located some three squares from the shop; at another time it was located about five squares from the shop.

X Q. 33. Were those the only repositories Wood, Eberhard & Co. ever had?

A. They were, except that we may have put a buggy or two in a barn or two when we first commenced.

X Q. 34. Did the firm of Wood, Eberhart & Co. ever have a repository on Main street where Hirse's hardware store is now located?

A. They did.

73 X Q. 35. How far is that from the place where Wood, Eberhart & Co.'s shops were located, and was that one of the repositories mentioned in your former answer?

A. That was the repository I referred to as being about five squares from the shops.

X Q. 36. Who had charge of the repository and attended sales?

A. There was no one who stayed at the repository. I attended the sales generally.

X Q. 37. Who kept the books of the firm of Wood, Eberhart & Co., and where were they kept?

A. I kept the books, and they were kept at the shop.

X Q. 38. While that firm was in business did you ever keep the books at the repository?

A. No, sir; not to my recollection.

X Q. 39. Did you have time to keep the books, attend to the sales, and personally inspect and oversee all the work that was done in each branch of the shop?

A. Yes, sir; our book-keeping and sales were small and required but little time.

X Q. 40. Is it not possible that during your absence from the shop for a day or two at a time that dashes might have been made and attached to vehicles and you not have seen or known the construction of them?

A. There might have been on repair jobs, but not on any new jobs we built. I am sure that I saw every new job that was turned out of the shop.

X Q. 41. Then, in a repair job, a new dash might have been made and attached to an old vehicle to replace a dash that had been broken off or worn out without your seeing it, might it not?

A. Yes, sir; such a thing might have been done.

X Q. 42. Do you remember the circumstances of a "Dunkard" bringing a family carriage to Wood, Eberhart & Co.'s to have a new dash put on and some other repairs done on it?

A. I do not.

X Q. 43. Did the firm of Wood, Eberhart & Co. ever repair broken dashes or dashes that had been broken off of vehicles and reattach them by turning up the front end of the feet that remained attached to the body, and drilling holes through their upper ends and also through the lower bar of the dash to correspond with the holes in the feet, and then bolted or riveted them together?

(Question objected to by complainant's attorney, for the reason that it is incompetent. E. G. McCollum, notary.)

A. We repaired dashes, but never bolted the feet onto the dashes, to my knowledge. I never saw the lower bar of an old dash heavy enough to drill a hole through and put a bolt through it.

X Q. 44. Might not such a thing have been done upon a repair job, which you never saw?

A. Yes, sir; it may have been.

X Q. 45. And that at the shops of Wood, Eberhart & Co.?

A. Yes, sir; it might have been.

X Q. 46. Would it not strengthen the dash to have it bolted or riveted to the feet instead of welding the feet to it or repairing one that had been broken off?

A. No, sir; it would not.

X Q. 46½. Did the firm of Wood, Eberhart & Co. ever build a buckboard for Dr. Badger; and, if so, what kind of a dash did it have?

(Objected to as incompetent by complainant's attorney and not proper cross-examination. E. G. McCollum, notary.)

A. I don't remember of ever building a buckboard for Dr. Badger.

X Q. 47. What kind of a dash was there on the vehicle sold to John Shank?

74 A. I think it was a rockaway buggy with a wooden dash.

X Q. 48. Did Wood, Eberhart & Co. ever build a vehicle for any man by the name of Shank except the John Shank above mentioned?

(Objected to as incompetent and immaterial by complainant's attorney. E. G. McCollum, notary.)

A. No, sir; I think not.

X Q. 49. Did not the brother of the said John Shank go to the firm of Wood, Eberhart & Co. and make some negotiations toward buying a phaeton or Prince Albert or some other vehicle?

(Same objection as to interrogatory 48 by complainant's counsel. E. G. McCollum, notary.)

A. I have no recollection of it; it might have been.

X Q. 50. When did you sell the rockaway to John Shank?

A. We sold it to him May 24, 1856, or that is the time he got the vehicle.

X Q. 51. When did the firm build their shops?

(Same objection as to interrogatory 48.)

A. In 1855, in the fall and winter.

X Q. 52. Did you get brick from John Shank to build the shop?

(Same objection as to interrogatory 48.)

A. Yes, sir.

X Q. 53. Did the firm of Wood, Eberhart & Co. ever make a new dash without solid feet?

(Same objection as to No. 48.)

A. No, sir; not to put onto any new vehicle we built.

X Q. 54. Might not a new dash have been made for a repair job by the firm of Wood, Eberhart & Co. having several holes in each end of the lower bar and attached to separate feet by means of bolts or rivets?

A. There might have been, but if there ever was I never saw it.

X Q. 55. Were you a practical mechanic of any kind; and, if so, what?

A. Yes, sir; I claim to be; a wagon and carriage builder is my trade.

X Q. 56. Do you know Henry Graham, who formerly kept a harness shop at Mishawaka, and is he still living here; if not, when did he move away?

(Same objection as to No. 48.)

A. I did know Henry Graham; he does not live here at present, but I can't remember when he moved away.

X Q. 57. Are you the John Eberhart who testified at South Bend, Indiana, a few years ago in the case of Peters *vs.* Austin *et al.*, pending in the U. S. circuit court for the northern district of Illinois?

Counsel for defendant states that Mr. A. C. Post, who testified in this cause at Goshen, Indiana, on the 30th and 31st of last month, is present, and says that in giving his testimony he made a mistake as to the date at which he worked at Mishawaka, and that circumstances come to his mind after giving said testimony that satisfied him that it was between the years of 1854 and 1859 instead of between the years 1864 and 1869, as he then testified, and he desires that an opportunity be given him to correct and explain said error. The counsel for defendants therefore request counsel for complainant to allow said Post to be sworn and make the statement he desires with regard to said dates and have the same placed on record.

Complainant's counsel replies that defendants having closed their case and complainant having taken testimony in rebuttal he cannot consent to the reopening of the case.

A. I don't remember of any such circumstances taking place at South Bend, but I testified in that case at this place, I think, in 1882.

75 Redirect examination:

Q. During the giving of your testimony in this case who, if any one, has been present assisting the defendants' attorney in this examination?

(Objected to by defendants' attorney as incompetent and immaterial. E. G. McCollum, notary.)

A. Mr. A. C. Post has been present all the time or nearly so; he seems to be assisting the attorney.

JOHN H. EBERHART.

United States of America, District of Indiana. In Chancery.

GEORGE M. PETERS
vs.
JULIUS A. HANSON and CORTLAND C. VAN CAMP.

Examination of witnesses on behalf of complainants under the 67th rule in equity, as amended, before Lew Wallace, who is hereby agreed upon as a special examiner under said rule, at Indianapolis, Indiana, on this the 26th day of February, 1884.

Present: Jason W. Firestone, as counsel for complainant, and Edward W. Rector, representing Stem and Peck, counsel for defendants.

It is hereby stipulated by and between counsel for complainants and counsel for defendants that these depositions be taken at this time, on this the 26th day of February, 1884, and that they be taken before Lew Wallace, a notary public within and for the county of Marion and State of Indiana, and that they be taken at the office of William and Lew Wallace, in the city of Indianapolis, Indiana. All formal notice is hereby waived, and this deposition is taken by consent, and all objections thereto are hereby waived, and the same be taken by question and answer.

JASON W. FIRESTONE,
Of Counsel for Complainant.

EDWARD W. RECTOR,
Representing Stem & Peck, Counsel for Defendants.

Testimony of Samuel Shank.

SAMUEL SHANK, a witness produced on behalf of complainants, being duly sworn to testify the truth, the whole truth, and nothing but the truth in relation to said cause, deposes and says:

Question 1. State your name, age, and residence.

Answer. Samuel Shank; age, 68; No. 405 Ash street, Indianapolis, Indiana.

Q. 2. Are you acquainted with John Shank, who lives near Mishawaka, in St. Joseph county, Indiana; and, if so, did you or not about 1854 purchase a buggy from him?

A. He is my brother, and I purchased a buggy from him about 1854.

Q. 3. What kind of a buggy did you purchase from him at that time, and what kind of a dash did it have on it?

A. It was called a rockaway buggy, and it had a wooden dash on it, to the best of my recollections.

Cross-examined by E. W. RECTOR, representing defendants.

X Q. 1. Do you know who made the rockaway which you bought of your brother in the year 1854?

A. I do not know; I know it was made in Mishawaka.

X Q. 2. Do you know how long your brother had owned the rockaway before he sold it to you?

76 A. To the best of my recollection, it was only about two or three weeks.

X Q. 3. Do you know whether your brother had ever used the rockaway during the time he owned it?

A. My recollection is that he had ridden it but about two or three times.

X Q. 4. Can you say positively that that rockaway, at the time you bought it of your brother, had a wooden dash upon it?

A. I think I can.

X Q. 5. How long did you own the rockaway?

A. I am satisfied that I had it as much as six years as my own.

X Q. 6. What became of the rockaway?

A. I believe that the old bay mare kicked it all to pieces.

X Q. 7. State, as near as you can, when it was kicked to pieces?

A. It must have been in 1865.

X Q. 8. Is that the only vehicle you ever purchased of your brother, and where were you at the time you purchased that one?

A. It is not the only vehicle. I bought several wagons, but that is the only buggy. It was at his house when I bought, near Mishawaka.

X Q. 9. During the time you owned said rockaway, did you ever have it repaired?

A. I don't think I did.

Redirect examination by Mr. FIRESTONE, attorney for complainant:

Q. In my direct question two, when I say "about 1854," I did not intend to limit you to one, two or three years subsequent or prior to that time, and if you owned the buggy five or six years and it was kicked to pieces in 1865, then you may have purchased the buggy in 1856 or 1857, may you not?

A. Yes, sir.

SAMUEL SHANK.

STATE OF INDIANA, }
Marian County. }

Be it remembered that before me, Lew Wallace, a notary public, within and for said county, pursuant to the stipulation attached to this deposition, at the law office of William and Lew Wallace, in the city of Indianapolis, in the State of Indiana, on this 26th day of February, 1884, came Samuel Shank, a witness produced in behalf of the complainant in this cause, who was examined, cross-examined, and re-examined, by question and answer, as shown in the foregoing deposition, and said witness, having been first duly sworn by me to testify the truth, the whole truth, and nothing but the truth, in relation to said cause, did, in answer to the questions asked, make answer to each of such questions as shown in said depositions. And such questions and answers were at the time reduced by me to writing in the presence of said witness, and of Jason W. Firestone, of counsel for complainant, and Edward W. Rector, representing Messrs. Stem & Peck, counsel for the defendants; and after the same had been so written out by me, the said Samuel Shank, being again duly sworn, by and did upon his oath say that the said deposition and his said answers to such questions were true, and thereupon, in my presence, at the time and place aforesaid, did thereunto subscribe his name.

In witness whereof I have hereunto, on this 26th day of February, A. D. 1884, subscribed my name and affixed my notarial seal.

LEW WALLACE,
Notary Public, Marion County, Ind.

77 *Testimony of James Nutt.*

Question 1. State you name, age, place of residence, and occupation.

A. Name is James Nutt; residence, College Corner, Preble county, O.; fifty-two years old; occupation, carriage-maker.

Q. Were you a member of the firm of Wood, Eberhart & Co., formerly located and doing business in the town of Mishawaka, Indiana; and, if yea, state what kind of business said firm did when your connection with said firm began; how long you were with said firm, and whether your connection with said firm was continuous, and your relation to the business of said firm.

A. I was a member of said firm of Wood, Eberhart & Co. and represented the company in said firm; said firm was engaged in the manufacture of light buggies, spring wagons, and a few farm wagons. I commenced at the formation of the partnership in 1855, and continued to be a member of said firm until the same was dissolved in February, 1858. I was the principal wood-worker. I was familiar with all branches of the work done at the factory of said firm. I frequently assisted at the blacksmith shop and also in the trimming shop.

Q. 3. Were you or not familiar with the kind and construction of vehicle dashes made by Wood, Eberhart & Co. during the time they were in business?

A. I was.

Q. 4. State whether or not said firm made any dashes having provisions for lateral adjustment for the purpose of attaching them to vehicles of different widths.

A. They did not. Our iron-framed leather-covered dashes were all made with a solid foot.

Q. 5. State whether or not said firm made a dash or dashes fitted for the front end of the body which they were attached to, and holes were drilled in the lower rod of the dash to attach the foot to them?

A. We did not manufacture any adjustable foot dash.

Q. 6. State whether or not the following occurred at the shops of Wood, Eberhart & Co. when a dash of the following description was repaired for a Dunkard, to wit: It was a square dash with two upright bars; the feet were bolted onto the dash between the two bars; there was in the first place four holes made, two at each end, probably an eighth or a sixteenth or, maybe, one-fourth of an inch apart; when we came to attach the dash to the vehicle, the bolts running through the front end of the body that held the foot-board on was in the way, and in order to get it in we had to drill another hole to the left end of the dash, to the left of the other holes which had been made previously, and move the foot to the left.

A. I have no recollection of any occurrence of that kind.

Q. 7. State whether or not they made a dash or dashes having a slot or series of holes in the lower bar for the purpose of bolting the dash foot to the dash.

A. They did not, to the best of my knowledge. I am confident

that if there had been anything of that kind come up I would have remembered it.

Q. 8. If said firm had ever made a dash or dashes like the dashes described in questions four, five, six, and seven, or either of them, state whether or not you would have known of said fact, and give any reason you may have for your answer.

A. Being associated as I was with the firm, I think I would have known of anything of the kind if it had been made.

Q. 9. State whether or not said firm sold a buck-board to Dr. Grimes.

A. My best recollection is that we did not.

Q. 10. Were you acquainted with John Shank; and, if so, where did he live?

78 A. I was acquainted with John Shank; he lived in St. Joseph county; he lived southwest from Mishawaka; I think southeast from South Bend.

Q. 11. State whether or not your firm sold said John Shank a buggy; and, if so, what kind?

A. Said firm sold John Shank a light rockaway of this form where they had a child's seat in front.

Q. 12. State whether you were or not acquainted with the people living in St. Joseph county, Indiana, and vicinity.

A. I was pretty well acquainted, having lived there from 1851 to 1858.

Q. 13. State whether or not there was another John Shank besides the John Shank of whom you have already spoken living in the vicinity of Mishawaka.

A. There was not; at least I never knew of any other.

Q. 14. When, if ever, did you first see or know of a dash or dashes having separable feet that had the feet secured to the dash by means of bolts and nuts?

A. My attention was never called to that until within the last five or six years.

Q. 15. When you first saw such dashes state whether or not you then considered them a new or old thing in the manufacture of carriages?

A. I considered them a new improvement in that line.

Q. 16. In what way did you consider it an improvement?

A. I could used them on a wide or narrow body according to the width of the body sills; they were more easily adjusted for repairs.

JAMES NUTT.

Circuit Court of the United States for the District of Indiana. In Equity.

GEORGE M. PETERS, Complainant.
vs.
JULIUS A. HANSON and CORTLAND C. VAN CAMP, Respondents. } No. 7367.

Examination of witnesses on behalf of the complainant under the 67th rule in equity, as amended, pursuant to the annexed notice.

Present: Jason W. Firestone for the complainant, and no counsel for the respondents.

By request of parties it is ordered that the depositions be taken by question and answer.

Testimony of Asher F. Bagley.

ASHER F. BAGLEY, a witness produced on behalf of the complainant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by JASON W. FIRESTONE, Esq., of counsel for the complainant, as follows:

Question 1. State your name, age, residence, and occupation.

Answer. My name is Asher F. Bagley; am seventy-eight years old; live in Rockford, Illinois; by trade am a carriage and plow builder; am in no active business now.

Q. 2. Where did you live prior to moving to Rockford, and when did you come here, and how long did you live at the place where you came from?

A. At La Porte, Indiana. I came here in February last, 1883. I lived in La Porte from 1853 to 1883.

Q. 3. Are you the Mr. Bagley who was formerly in partnership with Mr. Rose; and, if so, did you do business at La Porte, Indiana, under the firm name and style of Bagley & Rose?

A. Yes, sir.

79 Q. 4. When did the firm of Bagley & Rose commence business and when did they quit?

A. They commenced business November 7th, 1853, and quit May 12th, 1876. I bought Rose out then, and continued in the business.

Q. 5. Are you acquainted with William Rentfrow, a blacksmith, now of Goshen, Indiana, and if so, did he ever work for your firm of Bagley & Rose; and, if yea, when did he commence and when did he quit working for the same?

A. Yes, sir; am acquainted with him. He commenced working for our firm in 1854 and quit in 1857, I think; worked about three years for me altogether.

Q. 6. Who superintended the manufacture?

(Interrogatory withdrawn.)

Q. 6½. What was the business of Bagley & Rose?

A. Carriage and plow making; general blacksmith; we had two fires running on custom work.

Q. 7. Who superintended the manufacture of carriages?

A. I was the superintendent.

Q. 8. Was you familiar with all the work done by Bagley & Rose?

A. Yes, sir; I lived right adjoining the shop, right across the alley, and was always on hand; opened the shop myself and carried the key.

Q. 9. Do you remember the following circumstances, viz: "Where a fancy dash with a solid foot, 'turkey-winged,' with a scroll around," was exhibited at the fair grounds at La Porte, Indiana? And, if yea, state in whose shop said dash was made and whether or not Rentfrow helped to make it.

A. Yes, sir; it was made in Bagley & Rose's shop; Rentfrow helped make it.

Q. 10. How long would it take Rentfrow to make a dash like said fancy dash that was exhibited at the fair grounds at La Porte, Indiana?

A. He was a very slow man; so he would spend two or three days on what he would call a good dash. He wouldn't make such a dash in less than two or three days.

Q. 11. State whether or not you remember the following circumstances occurring while Rentfrow worked for Bagley & Rose, where he made a dash or two dashes, viz: "It was a carriage dash, $\frac{5}{8}$ oval iron. I made two for a man they happened to suit. He saw a dash I had made, and they happened to suit him, and he wanted me to make him two dashes. I asked him the width of his body. He said he did not know the width of them, they were not built yet, and he wanted to take the dashes South with him. I went to work and built him two dashes, and made them right and left feet, so that he could attach it to any width body that he wished. He paid me for them and took them." And did it occur while Rentfrow was working for your firm?

A. No, sir; he never did, nor any other man.

Q. 12. State whether or not, during the time Renfrow worked for Bagley & Rose, he repaired a dash where the foot had been broken off by taking the dash that was broken off, turning up a foot, drilling a hole through it and the dash, and bolting it back into the job again.

A. No, sir; I am satisfied he did not, for he did no repairing; his work was entirely on new work.

Q. 13. State whether or not, during the time Rentfrow worked for Bagley & Rose, he made a dash or dashes having laterally-adjustable feet or attachments for the purpose of connecting them to vehicles of different widths.

A. No, sir; I never knew anything of the sort being done at that time. We would have been very much pleased had we known any such way. We had to forge our feet out of Swedes iron; poor iron they couldn't be made of—couldn't stand the turning of the
80 corners. It would be a convenience in shipping buggies in packing them. It would have been a greater convenience in saving work than in any other; it would have saved half the work.

Q. 14. Please examine drawing annexed to complainant's letters patent numbered 213,529, March 25, 1879, now shown you, and state whether or not Rentfrow made a dash or dashes like or similar to that shown in said drawing, or with the exception that the dash or dashes Rentfrow made had one, two, or three holes to suit the width instead of the slot.

A. Not for me he didn't, and not while he worked for Bagley & Rose.

Q. 15. In your shop did the blacksmith work under direction as to how repair jobs and new jobs should be made; and, if yea, who gave such directions?

A. Yes, sir; I gave the direction myself how a job should be

ironed and how it should be repaired. Mr. Rose was a silent partner; he furnished one-half the capital and paid me extra; he did not pay any attention to the business.

Q. 16. When, if ever, did you first see a dash having a separable foot or laterally-adjustable feet or attachments for the purpose of connecting them to vehicles of different widths?

A. I could not say certain; I think about six or seven years ago.

Q. 17. When you first saw such dashes did you then consider their mode of attachment new and novel or an old and well-known thing in the smithing trade? And give any reasons you have for the opinion you express.

A. I considered them a new thing; I think the thing was simple and novel.

Q. 18. State whether or not such dashes are now and have been for a few years last past in common use.

A. As far as I have noticed, they are.

Q. 19. What advantage, if any, would there be in using channel iron or iron made channel shape in the lower bar of an iron-frame, leather-covered, adjustable, footless dash over that of any other form of iron?

A. There would be an advantage in that the holes could be more easily punched through the channel iron than if it was solid bar iron; it would be lighter and sufficiently strong.

Q. 20. If Rentfrow, while working for Bagley & Rose, had made a dash or dashes with separable feet or laterally-adjustable attachments for the purpose of connecting them to vehicles, or if he had made a dash or dashes like or similar to those described in questions eleven, twelve, fourteen, and fifteen, or as described in either of said questions, would you have known the fact? And give any reason you have for the opinion you express.

A. I think I would, sir, for I attended to business strictly myself—kept the minutes of my business myself—I mean the minutes or record of all the work done in our shop—and conveyed it to the book-keeper every night, who entered it in the books; I gave daily direction for the work done.

Q. 22. If you know anything of value to either party concerning the matter in controversy which you have not already testified to there, state the same fully and in detail as if specially interrogated thereto.

A. No.

ASHER F. BAGLEY.

Subscribed and sworn to before me this 7th day of March, 1884.

[SEAL.] A. D. EARLY,
Notary Public.

STATE OF ILLINOIS, }
County of Winnebago, } ss:

I, A. D. Early, a notary public within and for said county, selected to act as special examiner, under the 67th rule in
81 equity as amended, in the cause stated in the caption, do hereby certify that the foregoing examination was had, pur-

suant to the annexed notice, at my office, in Rockford, Illinois, in the Rockford National Bank building, on Friday, the 7th day of March, 1884.

I further certify that at the said time and place I was attended by Asher F. Bagley, a witness produced on behalf of the complainant, he being of sound mind and lawful age, and the said witness was, previously to the commencement of his deposition, by me cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition hereinbefore appearing by me reduced to writing in the presence of and read over to me by said witness, and was thereupon subscribed by the said Asher Bagley in my presence.

I further certify that I am not of counsel nor attorney nor relative of either of the parties to this cause, nor in any manner interested in the result thereof, and that I am the Albert D. Early mentioned and named in the annexed notice.

In testimony whereof I have hereunto set my hand and affixed my seal of office this 7th day of March, 1884.

[SEAL.] A. D. EARLY,
Notary Public.

Circuit Court of the United States for the District of Indiana. In Equity.

GEORGE M. PETERS
vs.
JULIUS A. HANSON and CORTLAND C. VAN CAMP. } No. 7367.

Examination of witnesses on behalf of the complainant, under the 67th rule of equity as amended, before Leopold M. Lauer, who is hereby agreed upon as a special examiner under said rule, at La Porte, this — day of February, 1884.

Present: Jason W. Firestone, of counsel for the complainant, and Edward W. Rector, representing Stem & Peck, for the defendants.

By request of parties it is ordered that these depositions be taken by question and answer.

Stipulation.

It is hereby stipulated by and between counsel for complainant and counsel for defendants that these depositions be taken at this time, commencing on the 25th day of February, 1884, and that the same be adjourned from day to day until completed, and that they be taken before Leopold M. Lauer, a notary public within and for the county of La Porte, State of Indiana, and that they be taken at the office of Wile & Osborn, in the city of La Porte, Indiana. All formal notice is hereby waived and these depositions taken by consent.

JASON W. FIRESTONE,
Of Counsel for Complainant.
EDWARD W. RECTOR,
Representing Stem & Peck, Counsel for Defendants.

Testimony of Augustus D. Kimberly.

AUGUSTUS D. KIMBERLY, a witness produced on behalf of the complainant, being first duly sworn, upon oath deposes and says, in answer to interrogatories propounded to him by J. W. FIRESTONE, of counsel for complainant:

Question 1. State your name, age, residence, and occupation.

Answer. Augustus D. Kimberly; age, 45; carriage blacksmith; La Porte, Ind.

82 Q. 2. Did you ever work for Bagley & Rose, formerly of La Porte, Ind.? And, if yea, state when you began, how long you worked, in what capacity, and whether you worked continuously for them during that time.

A. I did; began in October, 1854; nearly four years; till August, 1858, worked as apprentice; afterwards as journeyman; I did work for them continuously during that time.

Q. 3. Are you acquainted with Wm. Rentfrow, a blacksmith, of Goshen, Ind.; and, if yea, where did you become acquainted with him?

A. I know him; first become acquainted with him when I commenced working for Bagley & Rose.

Q. 4. Did Wm. Rentfrow work for Bagley & Rose at that time; and, if so, did he continue to work there until you quit working for Bagley & Rose?

A. He worked for Bagley & Rose at that time; he did not continue until I quit.

Q. 5. State if you know where he went after he quit working for Bagley & Rose.

A. I don't know exactly where he went when he first quit, but afterwards worked for Studebaker at South Bend.

Q. 6. Do you remember the following circumstance, viz: Where a "fancy dash" with a solid foot, "turkey-winged," "with a scroll around," was exhibited at the fair grounds at La Porte, Ind.; and, if so, do you know who made the dash, where it was made, to whom the dash belonged and what became of it, and what year said dash was on exhibition?

A. I do; Wm. Rentfrow made it; I think it was made in Mr. Bagley's shop; I think it belonged to Mr. Bagley; it was put onto a buggy and sold with the buggy; I think it was 1855 or 1856 the dash was on exhibition.

Q. 7. Did Wm. Rentfrow ever, to your knowledge, make a carriage dash or two dashes out of five-eighths oval iron for separate feet, with two or three holes drilled in the lower bar of the dash and two or three holes drilled in the upper end of each foot?

(Objected to by defendants' counsel as incompetent.)

A. No.

Q. 8. State whether or not Wm. Rentfrow, while working for Bagley & Rose, made a dash or two dashes under the following circumstances: Where a stranger saw a dash that Rentfrow had made that

happened to suit him, and wanted Rentfrow to make him two dashes to take South, where the bodies of the vehicles were not built yet, and Rentfrow built him two dashes without feet, so he could attach them to any width body, and the stranger paid Rentfrow for the dashes and took them away, or any like or similar circumstance.

(Objected to by defendants' counsel as incompetent, and also as leading.)

A. I have no recollection of anything of the kind.

Q. 9. State whether or not you remember the following circumstances occurring while Rentfrow worked for Bagley & Rose, where he made a dash or two dashes as follows: "It was a carriage dash, five-eighths oval iron; I made two for a man that they happened to suit; he saw a dash that I had made and they happened to suit him, and he wanted me to make him two dashes. I asked him the width of his body; he said he did not know the width of them, they were not built yet, and he wanted to take the dashes South with him. I went to work and built him two dashes, and made them right and left feet, so that he could attach it to any width body that he wished; he paid me for them and took them, and I never saw him since."

(Same objection as to previous question.)

A. I have no knowledge of anything of that kind.

Q. 10. State whether or not during the time Rentfrow
83 worked for Bagley & Rose he made a dash or dashes "having laterally-adjustable feet or attachments for the purpose of connecting them to vehicles of different widths.

A. I don't know any such circumstance.

Q. 11. State whether or not during the time Rentfrow worked for Bagley & Rose he made a dash or dashes as follows: "The bottom rail long, square place on it for to receive one, two, or three holes, as it may be, and a foot turned up, with a square corner, with a hole drilled through it, one or two, as it may be, and bolted it onto the dash."

(Same objection as to question 8.)

A. Not to my knowledge.

Q. 12. If Wm. Rentfrow had made a dash or dashes like the dashes described in questions seven, eight, nine, ten, eleven, or as described in either of said questions, would you have known such fact? And, if yea, give us some reasons why you think you would have known it.

A. I am certain I should have known it, because it would have been entirely different from anything I had ever seen at that time; and, beside, there was more or less rivalry between journeymen about their work, and everything in the shop was noticed.

Q. 13. State whether or not, during the time Rentfrow worked for Bagley & Rose, he repaired a dash, where the foot had been broken off, by "taking the dash that was broken off, turning up a

foot, drilling a hole through it, and through the dash also a hole, and bolting it back on the job again."

(Same objection as in questions 9 and 11.)

A. I don't know anything of that kind.

Q. 14. Please examine drawings annexed to complainant's letters patent No. 213,529, March 25th, 1879, now shown you, and state whether or not Rentfrow made a dash or dashes with the corner the same as shown in said drawings, with the exception that the dash or dashes made by Rentfrow had one, two, or three holes to suit the width instead of the slot.

(Same objection as in question 13.)

A. I never saw him make anything of the kind.

Q. 15. If Rentfrow had made a dash or dashes like that shown in the drawing and had repaired a dash or dashes like that described in question 13 while he was working for Bagley & Rose do you think you would have known such fact?

A. Yes.

Q. 16. Do you know James Shaw; and, if so, when and where did you become acquainted with him, and did he carry on the business of carriage making in La Porte while you worked for Bagley & Rose?

A. I first became acquainted with James Shaw at New Carlisle, where he worked for me about 1862, which was all the acquaintance I ever had with him.

Q. 17. When, if ever, did you first know of a dash having separable feet or laterally-adjustable feet or attachments for the purpose of connecting them to vehicles of different widths?

A. I should think in 1875 or 1876, after I went into business for myself; that was in 1875.

Cross-examination by EDWARD W. RECTOR, representing Stem & Peck, counsel for defendants:

X Q. 18. When did Wm. Rentfrow quit working for Bagley & Rose?

A. I should think about 1857 or 1858.

X Q. 19. During the time you worked for Bagley & Rose as apprentice in the blackship shop whom did you help?

A. Wm. C. Pitner, John M. Barkley, John Scott, and Wm. Rentfrow a few days.

X Q. 20. Were these men all blacksmiths working for Bagley & Rose, and how many and which ones worked there at the same time?

84 A. They were, and they were all there at one time.

X Q. 21. How many fires did Bagley & Rose run?

A. At first five; afterwards eight.

X Q. 22. Did you see and know the construction of all the work that each of these blacksmiths did while you were in the employ of Bagley & Rose?

A. Yes.

X Q. 23. Did you help all of them?

A. All of those that I have named.

X Q. 24. If you helped Wm. Rentfrow only a few days how was it that you saw and knew how every piece of work was made by said Rentfrow?

A. I was in the same room just across the shop.

X Q. 25. On that account did you personally inspect all the work that was done in the shop?

A. I did all the carriage work as a boy would do it.

X Q. 26. In answer to direct question No. 6 you say that the dash exhibited at the La Porte county fair was put on a buggy and sold with the buggy. Was it put on the buggy before it was exhibited at the fair or afterwards?

A. It was probably fitted before the exhibition, but was exhibited separate from the buggy.

X Q. 27. In answer to question 12 you say that if Wm. Rentfrow had ever made any dashes like those described in questions 7, 8, 9, 10, and 11 at the shops of Bagley & Rose you would have known such fact. Do you mean to say that you would have known it if he had made them at any time while he worked there, or only if he had made them while you worked there?

A. He worked there but a short time previous, and if he had ever made such a dash at any time it would have been used afterward.

X Q. 28. How long did he work there before you began working?

A. I think about six months.

X Q. 29. Then if he had made such dashes and they had been sold during the six months he worked there would you ever have seen them?

A. Probably not if they were sent South.

X Q. 30. If they hadn't been sent South and had been sold to parties living in the county around La Porte or to parties living anywhere but in the South would you have seen them?

A. Most likely.

X Q. 31. Then the fact of these being taken South would be the only circumstance that would probably prevent you having seen them after they had been sold and delivered?

A. I should think so.

X Q. 32. Did you see all dashes that were made by Bagley & Rose and sold elsewhere than in the South again after they had been sold and delivered?

A. I couldn't say that I did.

X Q. 33. Then, if Rentfrow had made such dashes before you had began work for Bagley & Rose and they had been sold in any part of the country but the South, is it not possible that you might never have seen and known the constructions of such dashes?

A. It's possible.

X Q. 34. Was Wm. Rentfrow a journeyman at the time you worked for Bagley & Rose?

A. He was.

X Q. 35. If Rentfrow, prior to the time you commenced working

for Bagley and Rose, had repaired broken dashes, or dashes that had been broken off the vehicles in the manner described in question 13, would you have seen such repaired job and know just the manner in which it had been repaired?

A. Perhaps not; not from personal observation.

X Q. 36. During the time you worked for Bagley & Rose,
85 from October, 1854, to August, 1858, was you at the shop of said Bagley & Rose and at work therein every day the shop was run; and, if not, how often and what length of time were you absent?

A. I couldn't say that I was; was absent very seldom; never more than one day at a time, except in the summer of 1856 a few days.

X Q. 37. Is it not possible that at some time when you were absent from the shop, either one day or when you were absent several days that summer, a dash might have been repaired which you did not see and know of?

A. It is possible, but not probable, because I think Rentfrow left before the time I speak of as being absent a few days.

X Q. 38. Did it necessarily take more than one day to repair a broken dash or reattach a dash that had been broken off a vehicle?

A. I never saw one repaired in that way at that time, and can't say how long it might have taken.

X Q. 39. What do you mean by "in that way" in your last answer?

A. By repairing a dash with separable feet.

X Q. 40. My question 38 did not ask how long it took to repair a dash in any special manner, but merely asked how long it necessarily would take to repair a broken dash or reattach one to a vehicle from which it had been broken in any or the usual manner?

A. It might require two or three hours or a part of two days, according to the amount of work, as we nearly always removed the leather and replaced it.

X Q. 41. If a dash had merely been broken off the vehicle, and no part broken but the feet, how long a time was required to reattach the dash in the manner in which you usually repaired such jobs?

A. That would depend on the style of the dash and the amount of work in it.

X Q. 42. How many styles of dashes were there in use and how did they differ in construction, so that it would require longer time to repair one style when the feet had been broken than it did another?

A. There were several; owing mostly to the amount of stitching and the construction of the frame. I don't know how to answer any better than that.

X Q. 43. How long did it take to do all the blacksmithing requisite in making the frame of a dash in the ordinary way?

A. That would be a rather hard question to answer—how to determine what is the ordinary way.

X Q. 44. How long did it take on the dashes which were the easiest and quickest made?

A. From three to five hours.

X Q. 45. When the blacksmithing on the dash frame was completed into what department of the shop was it then sent?

A. Trimming department.

X Q. 46. When you were engaged in the blacksmith shop did you see all the dashes again after they had been sent into the trimming shop and finished?

A. Perhaps not while I was in the blacksmith shop.

X Q. 47. Did you at any time see each and every dash after it was completed?

A. It is likely I did.

X Q. 48. If it took from three to five hours to make the frame of a dash how long did it then take to trim and complete the same?

A. From a half a day to a day and a half, I should say, according to the amount of work.

X Q. 49. Is it not possible that while you was in the em-
86 ploy of Bagley & Rose that at some time when you were absent a dash or dashes might have been made which you never saw?

A. Possibly.

X Q. 50. What causes you to remember particularly the dash mentioned in question 6, which was exhibited at the La Porte county fair about 1855 or 1856?

A. The number of scrolls on the rail.

X Q. 51. Did Wm. Rentfrow, while in the employ of Bagley & Rose, ever make dashes of any kind and sold them to a man who took them South?

A. Not to my knowledge.

X Q. 52. Is it not possible that he may have done so and you not remember it at the present time?

A. Barely possible.

X Q. 53. Are Wm. C. Pitner, John M. Barkley, John Scott, who were the blacksmiths at Bagley & Rose, now living; and, if so, where may they be found?

—. Wm. C. Pitner may be found in La Porte; Barkley and Scott I know nothing about.

X Q. 54. Do you know whether James Shaw is now living and where he may be found?

A. I know nothing of him.

Redirect examination:

Q. 55. Referring again to the fancy-dash exhibition at the La Porte county fair, how long would it take a blacksmith to make a dash like that one?

A. From a day to two days, according to the speed of the workman.

Q. 56. How long would it take a workman like Rentfrow to make such a dash?

A. I should say two days.

Q. 57. Was it or not an unusual thing to exhibit dashes separate from the vehicle at fairs at that time?

A. Unusual.

Q. 58. From your acquaintance with Rentfrow, and if he had made dashes like the fancy dash without feet (exhibited at the fair) prior to your coming into the shop, do you or not think you would have heard of it afterwards? And give any reason you may have for the opinion you express.

A. I think I should, as he was very fond of showing his work.

Q. 59. The examiner will now please read to you question 27 and your answer thereto, and I will ask you to explain what you mean by that part of your answer, viz: "It would have been used afterwards?"

A. The new and novel mode of attaching the feet to the dash was very much cheaper than the old and a great saving of labor.

Q. 60. When you first saw a dash having separable feet or attachments for the purpose of connecting them to vehicles did you then consider such mode of attachment new and novel, or an old and well-known method in the smithing trade for attaching dashes to feet? And give any reason you may have for the opinion you express.

A. It was entirely new to me; I had never seen anything of the kind before.

Recross-examination:

X Q. 61. Are you the Augustus D. Kimberly who testified in La Porte a year or two ago in the case of George M. Peters *vs.* Wm. B. Austin *et al.*, pending in the United States circuit court for the northern district of Illinois?

A. I am.

AUGUSTUS D. KIMBERLY.

87 *Testimony of Wm. C. Pitner.*

Question 1. State your name, age, occupation, and residence.

Answer. Wm. C. Pitner; age, 48; La Porte; carriage maker.

Q. 2. Did you ever work for Bagley & Rose, of La Porte, Ind.? And, if yes, state when you began to work for them and whether you worked continually and in what capacity.

A. Yes; commenced in the fall of 1853; worked for them seven years, or thereabouts, all except six months in the winter of 1857 and 1858, as carriage blacksmith.

Q. 3. State, if you know, when Bagley & Rose commenced business in La Porte, and how soon thereafter you became connected with them.

A. They commenced business in October, 1853. I was there at the time.

Q. 4. Were you acquainted with Wm. Rentfrow, a carriage blacksmith of Goshen, Ind.; and, if so, did he work for Bagley & Rose? — about when he commenced and quit working there.

A. Yes; I am acquainted with him. He did work for them; as

near as I can remember, he went to work for them the year after they commenced—that is, in the spring of 1854.

Q. 5. Was the shop of Bagley & Rose a large or a small one, and was you familiar with the work done by Wm. Rentfrow?

A. It was a large shop; seven fires running; yes, sir.

Q. 6. Do you remember the following circumstances, viz: "Where a fancy dash with a solid foot, 'turkey-winged,' with a 'scroll around,'" was exhibited at the fair grounds at La Porte, Ind.; and, if so, do you know who made the dash, where it was made, to whom the dash belonged, and what became of it?

A. I remember it well; Wm. Rentfrow; it was made in Bagley & Rose's shops; it belonged to the company; it was put on a buggy and sold.

Q. 7. Was it put on a buggy after it was exhibited at the fair?

A. Yes.

Q. 8. Was it or not unusual to exhibit dashes separate from the vehicles at fairs at that time?

A. I should think it an unusual thing in my judgment; never saw one before or since exhibited in that way.

Q. 9. How long would it take a workman like Rentfrow to make a dash like the "fancy dash" exhibited at the fair?

A. That is rather a hard question. I would say it would take a workman like Rentfrow (he was considered slow) a greater part of two days, as it was a very fine dash and finely finished.

Q. 10. State whether or not you remember the following circumstances occurring while Rentfrow worked for Bagley & Rose, where he made a dash or two dashes, viz: "It was a carriage dash, five-eighths oval iron. I made two for a man that they happened to suit. He saw a dash that I had made and they happened to suit him, and he wanted me to make him two dashes. I asked him the width of his body. He said he did not know the width of them, they were not built yet, and he wanted to take the dashes South with him. I went to work and built him two dashes and made him those right-and-left feet, so that he could attach it to any width body that he wished. He paid me for them and took them."

(Objected to by counsel for defendants as incompetent.)

A. I remember nothing of the kind occurring in the shop while I worked for Bagley & Rose.

Q. 11. State whether or not during the time you worked for Bagley & Rose he made a dash or dashes, viz., "having laterally-adjustable feet or attachments for the purpose of connecting them to vehicles of different widths."

A. I don't think he did.

88 Q. 12. Please examine drawings annexed to complainant's letters patent 213,529, March 25, 1879, now shown you, and state whether or not Rentfrow, while working for Bagley & Rose, made a dash or dashes like that shown in the said drawing, except that the dash or dashes made by Rentfrow had one, two, or three holes to suit the widths instead of the slots.

A. I don't think he did.

Q. 12. State whether or not, during the time Rentfrow worked for Bagley & Rose, he repaired a dash where the foot had been broken off by taking the dash that was broken off, turning up a foot, drilling a hole through it, and through the dash also a hole, and bolting it back on the job again.

A. I am satisfied he did not.

Q. 13. If Rentfrow had made a dash or dashes while working for Bagley & Rose like or similar to the dashes described in questions 10, 11, and 12, or as described in either of said questions, or had repaired a dash in the manner described in question 12, would you have known such fact? And, if yes, give us some of your reasons you think you would have known of it.

A. I am satisfied I would have known it from the fact of that being an unusual way to make and repair dashes at that time.

Q. 14. When, if ever, did you first know of a dash having separable feet or laterally-adjustable feet or attachments for the purpose of connecting them to vehicles of different widths?

A. Well, that would be a pretty hard question to answer just when. I should approximate the time eight to ten years.

Q. 15. State, if you know, whose make of dashes they were that you first saw.

A. Peters—what's call- the Peters dash.

Q. 16. When you first saw such dashes did you then consider their mode of attachment new and novel or an old and well-known thing in the smithing trade? And give us any reasons you may have for the opinion you express.

A. I consider it new and novel and a useful invention, because the dashes were lighter and easier attached to different-sized vehicles or bodies; also a cheaper mode of constructing dashes.

Q. 17. Are there any advantages in shipping such dashes; and, if so, what?

(Objected to as irrelevant and immaterial; this, as well as the foregoing question and answer.)

A. Yes; there is an advantage, because we can take the feet off; by taking the feet off we can pack the dashes closer—be less liable to injure the finish of same.

Q. 18. State whether or not such dashes are now in common use.

(Same objection as to question 17.)

A. They are.

Q. 19. What advantage, if any, would there be in using channel iron for the lower bar of an adjustable footless dash over that of any other form of iron for such purposes?

(Same objection as to question 17.)

A. By using channel iron you could punch or drill your holes or make a slot to receive the bolt or bolts without detracting from the strength of the bar itself, as it would materially affect the strength of either $\frac{5}{8}$ or $\frac{3}{4}$ oval iron by drilling or punching holes or making a slot to receive the bolt or bolts large enough to properly secure the dash to the body of the vehicle.

Q. 20. Did you work for Bagley & Rose during the entire time Rentfrow worked there?

A. I did.

Q. 21. What official position, if any, do you at present hold in the county or city?

(Same objection as to question 17.)

A. I am one of the councilmen of the city.

89 Cross-examination by EDWARD W. RECTOR, representing Stem & Peck, counsel for defendants:

X Q. 22. When did Bagley & Rose quit doing business?

A. I can't remember the time, but my best memory is they did business together about three years—that would make it in 1856 when they quit, according to my best memory.

X Q. 23. In answer to question 2 you say you began work for Bagley & Rose in 1853 and worked for them seven years. In view of your answer to question 22 above, please explain your answer to question 2.

A. I would explain that in this way: Bagley being the only active partner, and I working for him seven years, in answering as above I lost sight of the fact that he had several partners during that seven years; that's all; that's the explanation I give.

X Q. 24. Then did Mr. Rose go out of the firm in 1856 and a new partner come in; and, if so, did Wm. Rentfrow work for the firm after that time, and when did he quit?

A. According to my best recollection, he did. I think he worked for the new firm a short time.

X Q. 25. Do you know where Wm. Rentfrow worked before he began for Bagley & Rose, and do you know where he worked after he left their employ?

A. He formerly worked in what was called the Shumway shop in La Porte, and after leaving Bagley & Rose went to Mishawaka, according to the best of my recollection.

X Q. 26. How many blacksmiths worked in the shop of Bagley & Rose at the time you worked there, and did they all work there at the same time?

A. They averaged from 7 to 10 blacksmiths and helpers, and worked at the same time.

X Q. 27. Did you see and know the construction of each piece of work that each of these blacksmiths did while you were there?

A. In a general way I did.

X Q. 28. During the seven years you worked there did you, with the exception of the six months you were absent in the winter of 1857 and 1858, work at the shop each and every day the same was run; if not, how long at a time and how often were you absent?

A. I worked very steady; scarcely ever lost any time from sickness or any other causes.

X Q. 29. Were you ever absent one or two days at a time during the entire seven years you worked there?

A. I don't think I was absent more than one day at a time during the period that Rentfrow worked there.

X Q. 30. Were there never any dashes made at the shops of Bagley & Rose that you did not see?

A. I think not.

X Q. 31. Were there never any dashes repaired there at any time that you did not see?

A. There might have been.

X Q. 32. If dashes might have been repaired and you not have seen them how do you know just how such dashes were repaired?

A. I could not have known, unless they departed from the general way of doing work at that time.

X Q. 33. And if they had departed from the general way of doing work at that time you would have known it only from what others told you and not from personal observation, would you not?

A. That's the way I would have known it under such circumstances, unless it would have been something very different
90 in principle; then we would have been ordered to adopt the principle in a general way.

X Q. 34. Suppose the principle was not a good one, would you have been ordered to adopt it?

A. No, perhaps not. It being good or bad, as the case might be, if there had been a departure from general principles of work at that day it would have created a general talk among the workmen employed in the shop.

X Q. 35. Did Wm. Rentfrow, while in the employ of Bagley & Rose, ever make any dashes of any kind and sell them to a man that took them South?

A. Not to my knowledge.

X Q. 36. Had he done so would you have known it, and did you know where each dash made in the shops of Bagley & Rose was sold and taken?

A. I think I would from the fact that in those days dashes were never made and sold, as now, separate by themselves. It would be almost an impossibility for a workman to make two dashes and ship to one party without my knowing of the circumstances. Well, of course, I didn't know where each one that was sold was taken.

X Q. 37. Have you ever made a dash with separate feet; if so, when?

A. I have. I made one for a two-wheeled cart last summer.

X Q. 38. Is that the only one you ever made?

A. Yes.

X Q. 39. Did that one have holes or a slot in each end of the lower bar for the purpose of bolting it onto the feet?

(Objected to as incompetent and immaterial.)

A. It had one hole in each end to receive the dash bolts.

X Q. 40. Who were the trimmers at the shops of Bagley & Rose when you worked there, and where do they now live?

A. Wm. Dougherty and Rufus Faucher. The last I knew of Wm.

Dougherty he was in Walfington, Ohio. Faucher I don't know anything about at the present time.

X Q. 41. Is not channeled iron an old and well-known form for gaining strength and lightness, and has it not been long used for other purposes than in the manufacture of dashes?

A. I do not ever remember of having seen so-called channel iron in any place, only on Peters dashes.

Redirect examination:

Q. 42. Do you or not consider the making of dashes with adjustable feet or with laterally-adjustable feet or attachments "different in principle and a departure from the general way of doing work," as referred to in your answers and question 33?

A. I do.

Q. 43. Would or would not the making of such a dash as described in the last question have created a general talk among the workmen employed in the shop, as referred to in your answer to cross-question 34?

A. Yes, it would.

Q. 44. Am I to understand from your answer to cross-question 36 dashes are now made and sold separate by themselves from the vehicle; and, if so, to what extent, if you know?

(Objected to as irrelevant and immaterial.)

A. They are very extensively made and sold now in that shape.

Q. 45. What became of "fancy dash" exhibited at the fair?

A. It was put upon a vehicle which was exhibited at the county fair the following year.

Q. 46. Were Fisher Brothers or James Shaw in the carriage business here after you came to La Porte?

A. Not that I remember since I came here, which was in October, 1853.

91 Recross-examination:

Q. 47. Did any persons by the name of Fisher Brothers or James Shaw live at La Porte after you came here?

A. Not as I remember.

Q. 48. Did you ever hear of such parties?

A. I remember the name of Fisher and Shaw as being connected together in this place in blacksmithing, but never knew anything definite about them, all my knowledge of them being from hearsay only.

WM. C. PITNER.

Circuit Court of the United States for the District of Indiana. In Equity.

GEORGE M. PETERS
vs.
JULIUS A. HANSON and CORTLAND C. VAN CAMP. } No. 7367.

Examination of witnesses on behalf of the complainant, under the 67th rule in equity as amended, pursuant to the annexed notice.

Present: J. W. Firestone, Esq., for the complainant, and ——, for the respondents.

By request of parties, it is ordered that the depositions be taken by question and answer.

Testimony of Christ Binder.

CHRIST BINDER, a witness produced on behalf of the complainant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by J. W. FIRESTONE, Esq., of counsel for the complainant, as follows:

Question 1. State your name, age, residence, and occupation.

Answer. My name is Christ Binder; my age is 34 years; I reside in the city of Chicago, county of Cook and State of Illinois; I am a carriage blacksmith by trade.

Q. 2. Were you acquainted with Loomis & Avery, formerly of Chicago, Illinois; and, if so, where did they carry on business, what kind of business; are they still in business; and, if not, where are they?

A. I was acquainted with them; they carried on business on the corner of Harrison and Canal streets and the corner of Randolph and Ann streets; they were engaged in making and selling
92 carriage wood and iron work; they are not in business as a firm; Mr. Loomis is at La Porte, Indiana; I do not know where Avery is.

Q. 3. State whether or not you were ever in the employ of Loomis & Avery. And, if so, how long, when did you quit, and was you employed continuously during that time, and in what capacity was you employed?

A. I was in the employ of Loomis & Avery. I commenced work for them in the spring of 1875 and continued in their employ until the fall of 1879. Some time prior to the time I quit work Mr. Avery withdrew from the firm and Loomis continued the business. I was foreman in the blacksmith shop.

Q. 4. State whether or not Loomis & Avery manufactured dashes for vehicles. And, if so, did you not have the means of knowing the kind of dashes they manufactured and the kind of iron used for the frame-work of the dashes they made?

A. They did manufacture dashes for vehicles. As foreman of the blacksmith shop I superintended the making of the frame-work of

the dashes made by them; the bottom bar of the frame of the dash was made out of IX¼ flat iron; the side and top rails were made of oval iron, and a hole or holes drilled in the bottom bar to receive a bolt for attaching the foot to the dash.

Q. 5. Can you produce a dash frame such as was manufactured by Loomis & Avery?

A. I can; here is one.

The witness here produces an iron frame which he hands the notary taking this deposition. The complainant's counsel offers in evidence the iron frame produced by the witness, and asks the notary to mark it Complainant's Exhibit "Binder Dash."

Q. 6. In your experience as a carriage smith did you or not have occasion to use channel iron in making the frame-work of a vehicle dash?

A. I never did.

Q. 7. While you were in the employ of Loomis & Avery did they or not ever use channel iron in making the frame of a vehicle dash?

A. No, sir.

Q. 8. Would you or not have known of the fact had channel iron been used in making the frames of dashes at Loomis & Avery's?

A. Yes, sir; I would have known it. I was foreman and had charge of that department.

Q. 9. When, if ever, did you first see a vehicle dash where the frame-work or part of it was made from channel iron?

A. The first one I ever saw was last summer at Abball & Co.'s shop in Chicago; the lower bar of the dash frame was made of channel iron.

Q. 10. When did you first see a dash with separate feet?

A. I saw the first one at Loomis & Avery's when I worked there.

Q. 11. State, if you know, whose make of dash this was.

A. Peters' make.

Q. 12. State, if you know, when Loomis & Avery commenced manufacturing footless dashes, or dashes like or similar to Exhibit "Binder Dash."

A. About a year before I left them.

Q. 13. State whether or not Loomis & Avery purchased dashes already manufactured; and, if so, state, if you know, from whom they purchased them.

A. They did purchase some.

Q. 14. Do you know of anything further that would be of interest or benefit to either party to this suit?

A. I do not.

CHRIST BINDER.

93 Subscribed and sworn to before me this third day of May, A. D. 1884.

SAMUEL D. KING,
Notary Public.

Testimony of Joseph H. Ballom.

JOSEPH H. BALLOM, a witness produced on behalf of the complainant, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by J. W. FIRESTONE, Esq., of counsel for the complainant, as follows:

Question 1. State your name, age, residence, and occupation.

Answer. My name is Joseph H. Ballom; my age is forty-six years; I reside in the city of Chicago, county of Cook and State of Illinois, I am a carriage trimmer by trade and occupation.

Q. 2. Are you carrying on business for yourself; if so, where?

A. I am carrying on business for myself and have been for the last four years at Chicago, Illinois.

Q. 3. Were you acquainted with Loomis & Avery, formerly of Chicago, Illinois; and, if so, were you ever in their employ; and, if yea, in what capacity and how long?

A. I was acquainted with Loomis & Avery and was in their employ as foreman of the carriage-trimming department. I commenced work for them in the summer of 1875 and continued with them until the fall of 1879.

Q. 4. Were you familiar with the kind of iron used in the dash frame of the dashes made at Loomis & Avery's shop during the time you were employed there?

A. I was; it was common oval iron, with a flat lower bar, with one to three holes drilled in lower bar to receive the adjustable foot.

Q. 5. State, if you know, when Loomis & Avery commenced making the adjustable foot dash referred to in your last answer.

A. I think in the fall of 1877.

Q. 6. State, if you know, whose make of dash they used prior to that time.

A. They used the "Peters" dash prior to that time; that was the only dash on the market at that time, that I know of.

Q. 7. When, if ever, did you first see a vehicle dash where the frame-work or a part of it was made of channel iron? And state, if you know, whose make of dash it was.

A. In the fall of 1878 or spring of 1879. It was the dash manufactured by the Peters Dash Co.

Q. 8. State whether or not Loomis & Avery made dashes with the frame-work or part of it out of channel iron? And if such dash had been made there would you have known the fact?

A. There were no channel dashes made by Loomis & Avery while I was there. I had every facility for knowing, as I covered all the dashes made or used by them.

Q. 9. Please examine Exhibit "Binder Dash" and state what it represents.

A. It is a frame like the frames manufactured by Loomis & Avery.

Q. 10. Do you know of anything else that is of interest or benefit to either party to this suit?

A. No; I do not know that I do.

J. H. BALLOM.

Subscribed and sworn to before me this 3rd day of May, A. D. 1884.

SAMUEL D. KING,
Notary Public.

94 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Samuel D. King, a notary public within and for said county, selected to act as special examiner, under the 67th rule in equity as amended, in the cause stated in the caption, do hereby certify that the foregoing examination was had, pursuant to the annexed notice, at No. 2708 South State street, in Chicago, Cook county, Illinois, on Saturday, the third day of May, A. D. 1884.

I further certify that at the said time and place I was attended by Christ Binder and Joseph H. Ballom, witnesses produced on behalf of the complainant, they being of sound mind and lawful age, and the said witnesses were, previously to the commencement of their depositions by me, Samuel D. King, cautioned and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions hereinbefore appearing were by me reduced to writing in the presence of and read over by me to said witnesses, and were thereupon subscribed by them in my presence.

I further certify that I am not of counsel nor attorney nor relative of either of the parties to this cause, nor in any manner interested in the result thereof.

In testimony whereof I have hereunto set my hand and affixed my seal of office this 3d day of May, A. D. 1884.

[SEAL.] SAMUEL D. KING,
Notary Public for Cook County, Illinois.

UNITED STATES OF AMERICA, } ss:
District of Indiana, }

I, Noble C. Butler, clerk of the circuit court of the United States within and for said district, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record in the cause of George M. Peters against Julius A. Hanson *et al.*, as fully as the same remains upon the files and records now in my office.

Witness my hand and the seal of said court, at Indianapolis, in said district, this 16th day of September, A. D. 1885.

[Seal Circuit Court of the United States, District of Indiana.]

NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: Indiana C. C. U. S. No. 329. George M. Peters, appellant, *vs.* Julius A. Hanson and Cortland C. Van Camp, partners under the firm name of Hanson, Van Camp & Co. Filed October 3, 1885.

ADDITION TO RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~329.~~ 66

GEORGE M. PETERS, APPELLANT,

vs.

JULIUS A. HANSON ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED MARCH 26, 1888.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 329.

GEORGE M. PETERS, APPELLANT,

vs.

JULIUS A. HANSON ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, APRIL 9, 1888.

1 *Stipulation.*

Supreme Court of the United States. October Term, 1887. In Equity. No. of Case in Circuit is 7367.

GEORGE M. PETERS
vs.
JULIUS A. HANSOM *et al.* } No. 329.

On appeal from the U. S. circuit court, southern dist. of Indiana.

It is hereby stipulated and agreed that the transcript of the testimony of Richard G. Wood, Frederick J. P. Brackett, William Rentfrow, and Albert C. Post, hereto attached, is a correct copy from the files of the United States circuit court for the district of Indiana in the above cause; that the same was by accident omitted from the transcript filed in the Supreme Court by appellants, and that it is properly a part of the record in this cause, and shall be filed with the clerk of the Supreme Court and made a part of the record.

Cincinnati, March 15, 1888.

WM. HUBBELL FISHER,
Att'y for Appellant.
ARTHUR STEM,
Att'y for Appellee.

2 In the Circuit Court of the United States for the District of Indiana. In Equity.

GEORGE M. PETERS
vs.
JULIUS A. HANSON and COURTLAND C. VAN CAMP. } No. 7367.

Examination of witnesses on behalf of the defendants, under the 67th rule in equity, as amended, before Howard C. Hollister, who is hereby agreed upon as special examiner under said rule, at Cincinnati, Ohio, this seventh day of February, 1884.

Present: J. W. Firestone, Esq., for the complainant, and Arthur Stem, Esq., for the defendants.

By request of parties it is ordered that these depositions be taken by question and answer.

RICHARD G. WOOD, a witness produced on behalf of the defendants, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by Arthur Stem, Esq., of counsel for the defendants, as follows:

Question 1. State your name, age, residence, and occupation.

Answer. Richard G. Wood; 38 years of age; Cincinnati, Ohio. I am a machinist and manufacturer.

Q. 2. How long have you been engaged as a machinist, and what opportunities have you had to become familiar with the manner of working iron and applying it to mechanics?

Ans. 2. For twenty-five years. I have had a great many opportunities in many kinds of business during that time.

Q. 3. State whether you are familiar with any uses to which channeled iron is applicable; if so, what uses, and the purpose and manner, and for how long you have known them.

Ans. 3. Channeled iron, you might say, has been generally used in many different kinds of work and ways ever since I have been in the business. I first used it about twenty years ago in putting up hand rails and stairs.

3 Q. 4. How long was it used for stairs and why? How did you apply it?

Ans. 4. We used it for a hand rail on the top of the rods which came from the steps, about three feet. We punched holes in the web of the iron—in the face of the iron—and riveted the vertical rods over, which left nice, smooth flanges to stiffen the rail and strengthen it, and was at the same time light and answered the purpose of a solid bar of iron with much less work.

Q. 5. Can you name other uses to which channeled iron has been applied?

Ans. 5. Yes. I fitted up a large lot of iron for Wood Brothers & Co., of Bridgeport, Connecticut, in 1870, for their landaus, carriages which they are making, which they used—this channel iron—for dropping the tops and for holding the tops up in a position in different ways. These irons were fitted up with poles, with slots in them for adjustable purposes. I bought the iron from a hardware store, as it was common stock or general stock. We had no trouble to obtain different sizes for the purpose. Since then I have seen it used in a great many different ways and for a great many different purposes; for instance, fire-proof buildings. The girders and beams, the laths and roofing are all made of channeled iron. The bridges, railroad iron, gears of vehicles, jail-work, vault-work, safes, fire and burglar proof safes, fences, agricultural implements—in fact, it is used for a great variety of work which I can't call to mind just now.

Q. 6. For how long has it been so used?

Ans. 6. Ever since I have been in the business.

Q. 7. What was the shape of the channeled iron you used in 1870 for the carriages made at Bridgeport?

4 Ans. 7. The web of the iron was about two and one-half inches on the face; flanges about a half inch deep. The web was about three-sixteenths of an inch deep.

Q. 8. What part of the iron was perforated with slots for adjustment purposes?

Ans. 8. The web.

Q. 9. Did you buy it already channeled?

Ans. 9. Yes, sir.

Q. 10. State whether or not you are familiar with the use of channeled iron for the purpose—feet for any purpose.

Ans. 10. Yes; the feet of desks, stoves, machinery of different kinds, vehicles.

Q. 11. I now show you the cuts on pages 1198 & 1199 of Knight's

Mechanical Dictionary and ask you whether you find any of those forms to be new or how many of them, if any, were old and familiar in 1870.

Ans. 11. I don't see any new channeled iron forms in those cuts.

Q. 12. Were or were not the forms of channeled iron shown there in common use as early as 1870?

Ans. 12. Yes, sir; they were in general use at that time.

Q. 13. Is channeled iron commonly used in carriage-work; and, if so, for what purposes?

Objected — as leading and otherwise incompetent.

Ans. 13. Well, channeled iron has been used for years; dash feet, dashes, tops, the bows on the tops, and for the tire on wheels.

Q. 14. For how long a time have you known it to be used for these purposes?

Ans. 14. Twenty years.

Q. 15. What is the object in using channeled iron instead of solid bars?

Ans. 15. Well, it's for the purpose of securing stiffness, lightness, and it is easy to work. It is easier to punch a hole through a light web than through a solid bar. It is economy to use it.

Q. 16. Can you state any use to which channeled iron could be applied in mechanics where its use would be novel or would constitute an invention?

Objected to as incompetent.

Ans. 16. I don't know of any.

Q. 17. Has or has not channeled iron been used in mechanics wherever it was desirable to combine lightness and strength?

Ans. 17. Yes; we generally use it wherever we want to make that combination.

Q. 18. For how long has its use in that way been common and familiar?

Ans. 18. Ever since I have been in the business.

Q. 19. State whether or not iron dealers keep in stock constantly various forms of channeled iron.

Objected to as incompetent.

Ans. 19. We never had any trouble to obtain channeled iron from most any of the stores.

Q. 20. How many various forms is it kept in in stock?

Same objection.

Ans. 20. Well, I could not say as to that. A great many forms—for bridge purposes, house-building, jail-work, safe-work, vehicle-work; it is generally kept constantly on hand. Parties who generally use large lots of it for building, bridge purposes, and other purposes make contracts for large lots of it and have it rolled to order, and get it cheaper that way.

Q. 21. State whether or not there is anything novel in mechanics in the use of slots for the purpose of adjustment.

Ans. 21. No; there is nothing novel about adjustable slots, elongated slots, or holes bored extra large for that purpose.

Q. 22. State, if you know, how long and in what manner and for what purposes adjustment has been accomplished by means of slots.

Ans. 22. Well, any kind of mechanical work that has to be put together so as to be adjusted or duplicated in case of breakage—as, for instance, railroad iron. The butt ends are held together by bolts passing through elongated slots, so that the expansion and contraction of the rail will admit of self-adjustment; in fact, slots were a well-known mechanical principle, which has been used from a mouse-trap to a locomotive, you might say.

Q. 23. In the ordinary railroad iron is or is not the T-rail channeled?

Ans. 23. Yes, sir; T channeled.

Q. 24. Are or are not the slots of which you speak as provided for adjustment made in the web of the rail?

Ans. 24. They are,

Q. 25. Name some of the familiar uses in mechanics of slots for the purposes of adjustment and describe the manner of their use.

Ans. 25. They are so generally used in the construction of everything that is made of iron, or that iron is used in the construction of, that it would be almost impossible to pick out anything they were not used in for the purpose of adjustment.

Q. 26. Well, can't you name some of the familiar uses?

Ans. 26. Bridge-work, jail-work, vehicles, dashes, tops

7 Q. 27. Is it or is it not universally used on gauges for lathes, sewing-machines, grain drills, and all classes of machinery where the feed mechanism is made adjustable?

Ans. 27. Yes, sir.

Q. 28. How long has it been so used?

Ans. 28. Used, as I know of, for the last twenty-five years.

Adjourned until two o'clock of the same day.

Met pursuant to adjournment.

Complainant, by his counsel, objects to the foregoing questions and answers and to the testimony of this witness, R. G. Wood, for the reason that the name of said Wood and the facts necessary by law to be stated concerning him have not been set forth in any of the defendants' answers in this case, and without waiving said objection proceeds to cross-examine.

Counsel for defence replies that the testimony of this witness is not offered in anticipation of complainant's patents directly, but to show the state of the art, and that said objection comes too late.

Cross-examination by WILLIAM HUBBELL FISHER, of counsel for complainant:

Q. 29. As I understand you, you have testified that you have seen slots in dashes; are you quite sure of this?

Ans. 29. Yes, sir.

Q. 30. Are you as sure that you have seen slots in dashes as that you have seen slots in any of the other things that you have testified that you have seen slots in?

Ans. 30. Well, yes.

Q. 31. In reference to your answer four, state how the hand rail for stairs which you have there testified about was formed?

8 Ans. 31. It was a single channel on one side, two projecting flanges, flat on the face, round corners, so as to prevent hurting the hand, commonly known as the single-channel iron.

Q. 32. Where was this hand rail made, in what building was it put up, and where and when?

Ans. 32. It was made in the Pacific Iron Works, in Bridgeport, Connecticut, in 1868. It was made there and used there. The stairs were put up there. It was put up right away when it was made. It was put up in position right where it was made.

Q. 33. When you say it was used there, do you mean this hand rail formed a part of the railing on the stairs in the Pacific Iron Works aforesaid?

Ans. 33. I do.

Q. 34. In reference to your answer five, in what way was the channeled iron used for dropping the tops and for holding the tops up in position in the landaus and carriages Wood Bros. & Co. were making?

Ans. 34. The pieces were hinged together afterwards. I had nothing to do with putting them on; merely furnished them by contract from samples they wanted them made by. They were used to support the top and hold it in position when it was folded up. The object of the channeled iron was to hold the wood-work together to keep it from parting. That was single-channeled iron, too, very light.

Q. 35. What wood-work was it which that channeled iron was used to hold together? Describe how the channeled iron was fastened to the wood-work.

Ans. 35. The channeled iron was fastened to the wood-work by the screw hole that was drilled in the web of the iron—the wood-work which was the body of the vehicle.

Q. 36. On what part of the wood-work of the body of the

9 vehicle was the channeled iron located, and was it on the outside or inside of the body?

Ans. 36. It was located right back of the seat part—part of it—and part of it right back of the driver's seat. It went from the inside to the outside of the body—one flange on the inside and one on the outside.

Q. 37. Did this channeled iron constitute the top edge of the side of the body, and was its channel on its under side, and did the top edge enter said channel?

Ans. 37. Yes; that is about the way of it, excepting one-half of the channeled piece which was hinged to the lower half, and the two pieces laid together when the top was down.

Q. 38. What do you mean by the lower half?

Ans. 38. The lower half of the channeled iron hinged to the upper half.

Q. 39. Was the lower half of this channeled iron attached to the body and did it lie upon the top edge of the side of the body, as before mentioned?

Ans. 39. Yes.

Q. 40. Where was it and when was it you saw this channeled iron thus applied to landaus and carriages, and did you have anything more to do with this channeled bar iron than to furnish it to Wood Bros. & Co.?

Ans. 40. All I ever furnished to any carriage iron was to Wood Brothers, and all of those kinds of irons I ever made for them was in 1870. I had nothing to do with it than to furnish it, and I saw it on vehicles afterwards. Some of it was too short and some too long. That was the way my attention was called to it.

Q. 41. Where and for whom were you working when you
10 saw this channel iron thus applied to landaus and carriages?

Ans. 41. Wood Brothers' carriage works, at Bridgeport, Connecticut; worked right in the factory—in their machine shops.

Q. 42. Please describe how the upper half of this channeled iron, which was applied to landaus and carriages at Wood Brothers & Co., was attached to the top of the vehicle, and describe its shape or whether it was connected to the wood-work of the top, and in what manner; also describe the hinge connection between the upper and lower half of this channeled bar.

Ans. 42. In a similar manner to the way the lower half was attached. It was the same shape as the lower one. It was connected with the wood-work of the top in the same way the lower half was connected with the body by screws. It was just an ordinary hinge connection. There was a projection of the flange about an inch over the web, and they were connected to the other piece by an ordinary rivet.

Q. 43. Was the vehicle top you have spoken of in your last answers a falling top or a leather top? Describe the kind of top it was.

Ans. 43. That I could not be positive about; that I paid no attention to. I am not positive about that—whether it was wood or leather; I know it was a falling top—a top that let down.

Q. 44. To what part of the wood-work of the said top was the upper half of this channeled bar attached?

Ans. 44. I think to the center and the forward part.

Q. 45. To the center of what was the upper half of the channeled bar attached?

Ans. 45. To the center of the top, I suppose, or about the center.

11 Q. 46. How long was the upper half of this channeled bar attached to said top?

Ans. 46. I don't remember the length of it.

Q. 47. To what kind of a vehicle was this hinged channeled bar attached?

Ans. 47. I think they called them landaus. I'm not sure—rockaways, landaus, or something.

Q. 48. Mention the first instance you recollect of when channeled iron has been first used in the gears of vehicles, and when channeled iron has been used in dashes in dash-feet, in jail-work, vault-work, and give the times when such instances occurred.

Ans. 48. I saw chariots running in Washington city which were made somewhere in New Hampshire in 1870. They were made under Murch's patent, of that city. They were all channeled and "T" iron—all the gears. They were made, I think, in Concord, New Hampshire; I am not positive. It was in 1871 that I saw them. I think they were used in 1876 or 1877. It was in Chicago where I first — them, in Loomis & Avery's factory, somewhere on Randolph street. They made bodies and carriage goods. They had some dashes there of iron. They claimed their superintendent had got the dash up. I wasn't much interested at the time and made no special note. I did not know who made them. This was the first time I had seen channeled iron in dashes. I don't just remember the year when I first saw channeled iron used in dash-feet. It was only a few years ago, Hall's Safe & Lock Company, in 1872, I saw them putting jail-work together and using some channeled iron; also at Hall's Safe & Lock Company; the vault-work was done in 1872.

Q. 49. Who was the superintendent for Loomis & Avery referred to in your last answer?

12 Ans. 49. I don't remember his name.

Q. 50. Describe the kind of dashes made with channeled bar which you saw at Loomis & Avery's factory and how they were made.

Ans. 50. They were phaetons or carriages—I am not positive now—and had a channel on both sides, as you could tell by feeling the dash on the outside of the leather, and they had some sample pieces of iron. The pieces of iron were single channel, and they were talking about making dashes with channel iron. I am not positive that this was the first time that I was at their factory or the second time that I saw these pieces. It was 1878 that I was there the second time.

Q. 51. Are you positive you saw these dashes at Loomis & Avery's as early as '76 or '77?

Ans. 51. No; I am not positive about that. They had a great many different kinds of dashes.

Q. 52. What time in 1878 were you at Loomis & Avery's factory the second time?

Ans. 52. It was either September or October, 1878. It may have been as late as November. It was in the fall the last time I was there.

Q. 53. Did you see these dashes and sample pieces at the same time or at different times when you were at Loomis & Avery's?

Ans. 53. I think they had the dashes and samples both at the same time. I saw them at the same time.

Q. 54. What kind of feet were attached to these dashes at Loomis & Avery's and how were they connected?

Ans. 54. They had some with round holes in, and then they had

some experimental dashes that clipped onto the bar in dif-
13 ferent ways. That is about all I remember about the feet.

Q. 55. Were all the dashes referred to in your last answer made with channeled iron?

Ans. 55. No, sir.

Q. 56. What kind of feet were attached to these dashes made with channeled iron at Loomis & Avery's, and how were the feet connected to said dashes?

Ans. 56. That I don't know; whether they were holes, slots, as the dashes were covered and the feet not attached.

Q. 57. Are you positive that you saw these dashes made with channeled bar iron at Loomis & Avery's as early as November, 1878?

Ans. 57. I don't know whether they were made there or not, but I saw them the last time I was there. The reasom I remember about the iron — that while I was there I contracted to furnish them a machine for sewing the dashes, and objected to the channeled iron being used in the dashes on account of the machine not feeding good, as the machine was built with flat feed, and they made up a lot of dashes out of oval iron with solid feet on to test the machine, and accepted it and paid me for it before I left. I was there three weeks. What they used after that I can't say.

Q. 58. Who is this Murch who has a patent on channeled iron in connection with the vehicle gearing?

Ans. 58. I don't know that he had any patent on the iron. It was a patent on the gear and spring. I think his name is C. M. Murch, piano dealer, down on Sixth street, Cincinnati.

Q. 59. Mention the first instance when you saw a slot in the lower bar of a vehicle dash for the reception of the attaching bolt.

14 Ans. 59. I don't just remember what year that was, not having any interest in it. I never made any note of it in my mind and I didn't remember just when I saw the first one, either. There were a good many came out at the same time.

Q. 60. Mention the first instance when you saw a slot in the lower bar of a vehicle dash where the lower bar was a channel iron, the slot being made through the web and for the reception of the attaching bolt?

Ans. 60. I think it was at Emmons & Fisher's, in '78, or Limond's, where they had a broken dash. They attributed it to the light iron and showed it to me and said they couldn't use them.

Q. 61. Was the time mentioned in your last answer the same in which you first saw slots in dashes?

Ans. 61. Oh, no; the first slots I saw in dashes where they made their dash frames out of oval iron, with a slot formed at the bottom, about six inches at each end, by two double bars of oval iron, then a single bar of oval iron running on a cross connecting the two slotted ends together; these were the first slots I saw in dashes.

Q. 62. When did you first see slots in dashes as mentioned in your last answer, and where?

Ans. 62. Here, in Cincinnati; I think '75 or 76, probably; I ain't positive about the year. It was shown to me by Jasper Brown,

superintendent at Cook's. He had some dash frames made up that way and wanted to get a machine made to sew the coverings on.

Q. 63. Then the first slots you saw in dashes was in '75 or '76, probably, at Louis Cook's factory, in Cincinnati, Ohio. Is that correct?

Ans. 63. The first that I remember now of having my attention called to slots put in that way, I think they had some
15 tin dashes there with slots in that were shown to me—the first I ever saw of the tin dashes.

Q. 64. Question 63 repeated.

Ans. 64. That is the first slot of that kind, you might say. They showed me the dash frame with the slot in it, and explained to me what it was for, and asked me if there would be any trouble to make a machine to sew around it. My interest was in the machine.

Q. 65. Please explain what you mean by the expression "the first slot of that kind," in your last answer.

Ans. 65. The slot formed by two oval bars, making a three-paneled dash.

Q. 66. Mention the first instance where you saw a slot in a single bar of a dash; state where and when and the circumstances under which you saw it.

Ans. 66. I think it was '78; I ain't positive of that; it might have been later; I don't remember when.

Q. 67. Was not the dash mentioned in your last answer probably one of George M. Peters' dashes or Peters Dash Company's dashes?

Ans. 67. I don't think it was. They represented to me they had forged it out themselves, and would forge them all that way if I could build them a machine to sew the covers on.

Q. 68. Whom do you mean by "they" in the last answer?

Ans. 68. The Louis Cook Company.

Q. 69. What is the technical name of an iron which, viewed in cross-section, consists of a central web terminating in or connected to a cross-piece at right angles to the web, the cross-piece at one end of the web forms flanges, one of which projects beyond one side of the web, and the other flange projects beyond the other side
16 of the web; so also the cross-piece at the other end of the web forms flanges, one of which projects beyond one side of the web and the other flange projects beyond the other side of the web?

Witness here refers to Knight's Mechanical Dictionary.

Ans. 69. If I understand your description, mechanically speaking, you would call it "T" iron.

Q. 70. Examine Exhibit "Dash B," already filed in this case, also Exhibit "Dash C," already filed in this case, and, in each exhibit, examine the channeled bar forming the lower bar of the dash frame, and state whether you see any patentable novelty or patentable invention in the construction or application of the lower bar in either of these dashes, Exhibit "B" and "C." Please exclude from consideration the form of the hole in the channel bar for the admission of the attaching bolt.

Objected to as irrelevant and incompetent.

Ans. 70. I don't see anything peculiar about the iron, only that it is rolled down light. I don't see what is patentable about either one of them, as far as novelty is concerned. For the purpose that this iron is used for may be novel. It is done to economize. Economy is not patentable.

Q. 71. Have you not been employed to some extent by the Active Manufacturing Company of this city, Cincinnati, Ohio, and do you not know that they are parties to this suit?

Ans. 71. Of course, I know they are parties to this suit. I was employed by the Singer Company this fall to sell them, the Active Manufacturing Company, an improved dash machine; also bow-covering machine. I sold the bow-covering machine, but did not sell the dash machine, but had to take it back to the Singer Company. Those are the last trade transactions we have had.

17 I have been employed to some extent by the Active Manufacturing Company. They paid me for putting the machines in.

RICHARD G. WOOD.

Also FREDERICK J. P. BRACKETT, being first duly sworn, deposeth and says, being a witness introduced to testify on behalf of the defendants, in reply to interrogatories propounded by Arthur Stem, Esq., of counsel for defendants:

Q. 1. What is your name, age, residence, and occupation?

Ans. 1. Frederick J. P. Brackett; 36 years of age; Covington, Kentucky; I am superintendent of the Lomas Forge and Bridge Works, Cincinnati.

Q. 2. How have you been engaged for the last fifteen years?

Ans. 2. I have been engaged as draughtsman and mechanical engineer and superintendent in different bridge companies in the United States.

Q. 3. State whether your experience has enabled you to become familiar with the various uses, forms, and manner of manipulating and using iron.

Ans. 3. It has.

Q. 4. State whether or not channeled iron is a common form for mechanical uses; and, if so, some of the uses to which it is put.

Ans. 4. It has been commonly used in all frame structures where a stiffness and lightness is desired. I have known of its use since 1862, when I first took an active part in manufacturing. We use it in bridges, roof trusses, machine frames, floor beams, joists, tramways—in fact, hardly a frame structure but what it is used more or less. These other classes of manufactories use it in numerous places,

18 such as fence pickets, bottom rail of fences, in stove manufacturing, furniture manufacturing, sewing manufacturing, and in fact I hardly think there any class of iron structures where lightness is required but that it could be used to advantage.

Q. 5. How long have you known of these uses you have referred to?

Ans. 5. Fifteen years or more.

Q. 6. Should it be desirable to combine lightness and strength in the construction of vehicles or any parts of them, would it require any invention or would it be novel to apply channeled iron for that purpose?

Ans. 6. No, sir; I think not, as channeled iron is in almost as common use as bar iron, and hardly any framed work is made where stiffness and lightness is required but that it is used, because it is the stiffest form in which iron can be used in carrying a load between two points, either suspended or in the form of a —, and wherever a compressible strain occurs or cross-strain or any other strain than a purely tension strain, it is the *chiefest* iron to use, and it is in common use under such circumstances.

Q. 7. What other advantages or advantage, if any, is obtained by the use of channeled iron which is also old and familiar?

Ans. 7. Wherever two members running either at an angle or in the same direction its great convenience is in the easy manner and strength with — such attachments and connections can be made, on account of the thinness of its web, it being readily drilled or punched, requiring a great deal less labor and expense than flat bar iron, and on this account it is in general use throughout the
19 United States for the last fifteen to twenty years, that I know of.

Q. 8. Can you give any instances in which channeled iron has been used as supports—that is, legs or feet, prior to 1875?

Witness here asks whether counsel means channeled on one side or both.

Question. Either?

Ans. 8. Sewing-machine legs, stove legs, school-desk legs, steam-heater legs; that's all I think of just now.

Q. 9. Do you know of any use of iron for feet or supports where these supports are not made channeled, as a rule?

Ans. 9. No. sir; I do hot, and as a question of economy of material, it should be done in every instance where practicable.

Q. 10. I now show you the cuts on pages 1198 & 1199 of Knight's Mechanical Dictionary, and ask you how long you have known the various forms of channeled iron there shown to be used?

Ans. 10. I have used them since 1870, and I am sure of their being used much longer.

Q. 11. Where it is desirable or necessary in mechanics to provide for adjustment of parts attached to one another, what is the most common form or manner of securing adjustability?

Ans. 11. Where two pieces are bolted together the general form is by an oval or slotted holes. We have always used such a connection wherever it is possible, in frame structures or sliding parts, where difference in length or position is required.

Q. 12. Can you name a few of the applications of this slot for the purpose of adjustment, in your own business and outside of it?

Ans. 12. We use it in all bearing plates where bridges are anchored to the masonry and where rollers are placed under one

end to allow for contraction and expansion. It is also used
20 for roof-truss bearing plates to allow the roof to change its position on the wall, and for the fastening of columns to continuous girders, where the change of temperature changes the position of the girders or the columns. It is also in common use in such work as slide gauges where the adjustment of the gauge is required. It is used on an iron planer where the difference of the length of the parts is required at different times. It is also used on the ordinary carpenter's plane to adjust the position of the knives. It is used on a rotary wood planer for the same purpose, and, in fact, there is hardly an adjustable part of a machine where two pieces come in close contact but that it is the most common mode of adjustment, and I consider — as one of the commonest principles of mechanics, and one that has been used, that I know of, for fifteen years, and was an old principle at that time.

Q. 13. Would any ordinarily skilled mechanic who had occasion to provide for the adjustment to different positions of the parts of any machine or device be able to apply this principle without suggestion or invention?

Objected to as leading and incompetent.

Ans. 13. He could, for the reason that this would be the first manner in which he would try to make the connection, when, if it did not work, he would look for some other manner to make connection, for the reason that this is one of the simplest and easiest methods for connecting and allowing adjustment where both parts, when two pieces are used, are made of iron.

Complainant, by his counsel, objects to the foregoing questions and answers, and to the testimony of this witness, Frederick
21 J. G. Brackett, for the reason that the name of said *Banett* and the facts necessary by law to be stated concerning him have not been set forth in any of the defendants' answers in this case; and, without waiving said objection, proceeds to cross-examine.

To which counsel for complainant offers the same reply as in case of the last witness.

Cross-examination by WILLIAM HUBBELL FISHER, of counsel for complainant:

Q. 14. Do you know anything about building of road vehicles?

Ans. 14. Never had any experience in the manufacture of road vehicles complete, but have manufactured more or less details or parts.

Q. 15. Did you ever see any channel iron used in a road vehicle?

Ans. 15. Yes, sir.

Q. 16. Where and when have you seen channeled iron used in a road vehicle, and in what part of same?

Ans. 16. I have seen it in the dashes of buggies and in the nuts on the axles in different buggies that I have used at different times. The exact time and place I would be unable to state, as I kept no memorandums whatever.

Q. 17. Did you ever see a channeled bar in a dash prior to 1876?

Ans. 17. I could not answer this question positively as to date for the same reason that I gave above, as I only remember incidentally as noticing the use of that iron in those places at the time, and because I do not make the designing of that class of framed iron-work a specialty, and therefore do not keep posted in its constructions.

22 Q. 18. When and where did you ever see a channeled nut on the axle of a road vehicle?

Ans. 18. You will find that there are patents issued on nuts of this character, and that although they may not have been in general use they were used, but the same answer for time and place as given to questions above would be my answer to this.

Q. 19. Did you ever see a channeled nut in actual use on an axle?

Ans. 19. When I gave the channeled nut as part of my answer as the uses to which I had seen channeled iron used I remembered as distinctly having had this nut brought up to me and had explained its advantages and disadvantages, as we manufacture work of this description.

Q. 20. State the time when and place where this channeled nut was shown to you, and its advantages explained; also state who showed it to you, and name the patents covering said channeled nut.

Ans. 20. It was while on the road traveling in the interests of our business and by a stranger. The patents covering this nut, to find the same you will have to search the records, as I kept no memorandums and did not intend or expect the matter would be brought up again.

Q. 21. Don't you recollect the time when this channeled nut was shown to you?

Ans. 21. No, sir; because we manufacture a great many odds and ends of this kind, and there seldom a week passes but that we have more or less applications to look into the practicability of different kinds of manufactured work.

Q. 22. Was this the only channeled nut to be used on a vehicle axle that you ever saw?

Ans. 22. Yes; that I ever had my attention called directly to.

23 Q. 23. Describe the construction of this channeled nut for a vehicle axle which was shown to you, as you have mentioned.

Ans. 23. There was a regular recess or channel cut in the face of the nut.

Q. 24. Did the recess extend on both sides of the bolt hole?

Ans. 24. Yes, sir.

Q. 25. Was the recess bounded at the ends so that the recess formed a cavity?

Ans. 25. The channel was cut entirely around the hole.

Q. 26. Was the recess or channel entirely independent of the central screw-threaded hole of the nut?

Ans. 26. Yes, sir.

Q. 27. Then, as I understand you, this annular recess in the face

of the bolt did not communicate with the central screw-threaded hole of the nut?

Ans. 27. As near as I can remember, it did not, but as I am only answering these questions from memory, would not be positive.

Q. 28. Did you ever see a slot in a vehicle dash for receiving the bolt connecting the foot to the dash before 1876?

Ans. 28. On account of this branch of business being out my line, I could not mention any positive time, as I never paid any particular attention to the construction of vehicles.

Q. 29. Are you not aware that it is invention to combine two or more well-known elements to produce new results over the old way of manufacturing?

Question objected to as immaterial and calling for a legal opinion.

Ans. 29. I am unable to judge in such matters.

Q. 30. Are you aware that channeled iron is the strongest
24 form in which metal can be put, as you have heretofore stated in your deposition?

Ans. 30. I am.

Q. 31. How does channeled iron, whether channeled on one side or both, compare in strength with tubular iron or iron tubing of the same weight of metal?

Objected to as irrelevant and immaterial.

Ans. 31. That depends entirely upon the uses to which it is put and upon the requirements, the connections, and the positions in which the material is used. Under some circumstances each one is better than the other and the question of economy always comes into the construction.

Q. 32. Please answer my last question. When both the tubular iron and the channeled iron are subject to the conditions mentioned in your answer six of direct examination?

Ans. 32. Channeled iron has proved itself to be the best, for the reason that when iron was first used for requirements given in my answer six tubular forms were used exclusively, but to-day tubular forms are seldom used—only once in a great while—while channeled iron is used in large quantities to-day, and, as I said, hardly a structure in which iron is framed but that channeled iron, either channeled on one side or both, is used.

Q. 33. Do you wish us to understand that channeled iron is used more than tubular iron because channeled iron is stronger than tubular iron, weight for weight?

This and previous questions objected to as irrelevant and immaterial and not proper on cross-examination.

Ans. 33. It is, for the reason that it can be placed in such position as to bring the heaviest weight of material the
25 *furtherest* off from the neutral axle, making the form of the piece in a stronger shape.

F. J. P. BRACKETT.

STATE OF OHIO, *Hamilton County,* } ss:

I, Howard C. Hollister, a notary public in and for Hamilton county and State of Ohio, hereby certify that on the days named in the deposition hereto annexed I was attended at the places named in said deposition by counsel therein named and Richard G. Wood and F. G. P. Brackett, the witnesses aforesaid; that said witnesses were duly sworn and examined, and that the deposition was reduced to writing by me and by me read to the witnesses and were by them subscribed in my presence. I further certify that I am not of counsel or relative to any of the said parties to said cause and have no interest whatever in the matters at issue. I also certify that my fee for taking said deposition is $16, and that the same has been paid me by said defendant.

Dated at Cincinnati, Ohio, February 1st, 1884.

[SEAL.] HOWARD C. HOLLISTER,
Notary Public, Hamilton County, Ohio.

26 Circuit Court of the United States for the District of Indiana.
In Equity.

GEORGE M. PETERS
vs.
JULIUS A. HANSON and COURTLAND C. VAN CAMP. } 7367.

The complainant will take notice that the defendants will examine witnesses in the above-named cause under the 67th rule in equity, as amended, before —— ——, Esq., a notary public and special examiner, at the office of Baker & Mitchell, in Goshen, Elkhart county, Indiana, on Wednesday, the 30th day of January, 1884, beginning said examination at 10 o'clock a. m. of said day and continuing from day to day until completed.

STEM & PECK,
Solicitors for Def'ts.

Received copy.
January 25th, 1884.

WM. HUBBELL FISHER,
Of Solicitors for Compl't.

27 Circuit Court of the United States for the District of Indiana.
In Equity.

GEORGE M. PETERS
vs.
JULIUS A. HANSON and COURTLAND C. VAN CAMP. } 7367.

Examination of witnesses on behalf of the defendants, under the 67th rule in equity, as amended, before Harry A. Ritter, who is hereby agreed upon as special examiner under said rule, at Goshen, this 30th day of January, 1884.

Present: William Hubbell Fisher, of counsel for the complainant,

and Edward W. Rector, representing Stem and Peck, counsel for the defendants.

By request of parties it is ordered that these depositions be taken by question and answer.

WILLIAM RENTFROW, a witness produced on behalf of the defendants, being first duly sworn, deposeth and saith, in answer to interrogatories propounded to him by Edward W. Rector, Esq., representing Stem and Peck, of counsel for the defendants, as follows:

Question 1. State your name, age, residence, and occupation.

Answer. William Rentfrow; age, 56; residence, Goshen; blacksmith by trade.

Ques. 2. How long have you been engaged in the business of blacksmithing?

Ans. Over 40 years.

Ques. 3. State whether in connection with your business of blacksmithing you have made vehicle dashers.

28 Ans. Yes, sir.

Ques. 4. How much experience have you had in the manufacture and work on vehicle dashers?

Ans. A great deal of it.

Ques. 5. Where were you living during the years 1849, '50, '51, '52, and '53, and what was your occupation at that time?

Ans. La Porte, Indiana; blacksmithing by trade.

Ques. 6. State whether or not during those years you made or repaired vehicle dashers in connection with your blacksmithing?

Ans. Yes, sir.

Ques. 7. State whether or not during those years you made any dashers having laterally adjustable feet or attachments for the purpose of connecting them to vehicles of different width?

(Objected to as leading by counsel for complainant.)

Ans. Yes, sir; I did.

Ques. 8. Please describe those dashers and attachments or feet and the manner of their connection to the vehicle.

Ans. Well, I make my dash, the bottom rail, long square place on it for to receive one, two, or three holes, as it may be, and a foot turned up with a square corner with a hole drilled through it, one or two, as it may be, and bolt it onto the dash.

Ques. 9. Please state how you connected such dashes to vehicles of different widths.

Ans. By turning up the foot to the right and one to the left, so as I could use them on either side of the dash.

Ques. 10. Please state what were the shape of these feet
29 which enabled them to be turned up, as you say, to the right or left?

Ans. L-shaped and turned up either to the right or left, then?

Ques. 11. State whether or not these feet had more than one hole in them for connection to dashers of different widths.

Ans. Yes, sir.

Ques. 12. Did or did not you make any dashers having several holes in the bottom rail for the purpose of connecting them to vehicles of different widths?

(Objected to as leading.)

Ans. I have made them; yes, sir.

Ques. 13. Please examine the drawing annexed to copy of complainant's patent, No. 213,529, of March 25th, 1879, now shown you, and state wherein the construction therein shown compares with or differs from that of the dashers made by you at La Porte, Indiana, between the years 1849 and 1853, and also what difference there was in the manner of attaching the dashers to the vehicle.

(Last clause of question objected to as leading.)

(The part of the question objected to is withdrawn by counsel for defendants.)

Ans. I made mine with the corners the same as this, with the exception in this (referring to drawing) of the long slot I had one, two, or three holes in to suit the width. The foot on this dash (referring to drawing) is just the same, and also turning an L shape to the foot, the same with holes in to attach on the dash.

30 (Last part of answer is objected to as immaterial and irresponsive.)

Ques. 14. Please state how the holes in the dash served to connect the dash to vehicles of different widths.

Ans. I don't understand the question exactly, as you ask it.

Ques. 15. You say, in your answer to question 12th, "I made mine with the corners the same as this, with the exception in this (referring to the drawing) of the long slot I had one, two, or three holes in to suit the width;" how did the one, two, or three holes referred to serve to connect the dash to vehicles of different widths?

Ans. If the body was wider than the dash I would set my foot with the ends turned inward; if the body was narrower than the dash I would set my feet with the ends turned outward and bolt it just as it would come there,

Ques. 16. "By bolting just as it would come there" what do you mean?

Ans. Wherever my holes are drilled in the feet and holes drilled in the dash will correspond to bolt it on.

Ques. 17. State whether or not, in repairing broken dashers, you ever used separable feet or attachments bolted to the vehicle body and also to the dash.

Ans. Yes, sir; I have.

Ques. 18. Please describe, as briefly as you can, how you repaired a broken dash by those means, or a dash that had been broken off the vehicle.

Ans. Simply by drilling a hole through the bottom of the dash, turning up a new foot, square or any angle, and drilling a hole through and bolting it fast to the dash.

31 Ques. 19. How do you fix the date when you made the dashers referred to in this deposition at La Porte, Indiana?

Ans. Within the years between 1850 and '55 or '6, as near as I can recollect.

(Counsel for defendants says witness evidently misunderstands the question and restates it in different form.)

—. How do you know that it was between the years 1849 and 1853 that you made the dashers referred to in this deposition at La Porte and what circumstances, if any, fix the date in your memory?

Ans. Because I first went to La Porte about the last of "'49" and worked there during these years, as near as I can recollect.

Ques. 20. What circumstances or events, if any, aid you in definitely stating that 1849 was the year in which you moved to La Porte?

Ans. Well, sir, it was the year that the California gold fever was raging so.

Ques. 21. Where were you living in the years 1867 and 1868?

Ans. I think at Mishawaka, Indiana, as near as I can recollect.

Ques. 22. Did you make any carriage dashers while living in Mishawaka?

Ans. Yes, sir.

Ques. 23. State whether or not the dashers made by you there were like the dashers you have referred to as being made by you at La Porte.

Ans. Yes, sir; on the same principle.

Ques. 24. Please state whether the dashers made at Mish-
32 waka were connected to the vehicle in the same or in a different way from the ones made by you at La Porte.

Ans. Just about the same—the same principle.

Ques. 25. Can you give the names of any party or parties for whom you made dashers having a number of holes in the lower rail for the purpose of connecting them to vehicles of different widths while you were at Mishawaka in 1867 & '8; and, if so, who were they?

Ans. I think, as near as I can tell, Doctor Grimes was one and a Mr. Shank for another.

Ques. 26. Can you give any circumstances connected with the dashers made for Mr. Shank at that time which causes you to remember them particularly?

Ans. I couldn't exactly; no, sir.

Ques. 27. How were the dashers made for Mr. Shank adapted to be connected to the vehicle and did you put them on the vehicle for him?

Ans. I made them by holes being drilled into the bottom rail to receive the foot. I didn't put them on myself; the trimmer or painter that set up put them on.

Ques. 28. Was more than one hole made at each side of the bottom rail of those dashers for the purpose of receiving the bolt for connecting it to the foot?

(Objected to as leading.)

Ans. Yes, sir; there was three.

Ques. 29. Why did you make three holes?

Ans. In order to fit any width of body.

33 Cross-examined by Mr. FISHER, counsel for plaintiff:

Further taking of testimony adjourned to 12.45 p. m.

Ques. 30. As I understand you, all the dashes you have testified about were arranged for lateral adjustment, and all the dash-feet you have testified about contained provisions for lateral adjustment; am I correct?

Ans. Those that I spoke of were made that way.

Ques. 31. When you say "those that I spoke of," in your last answer, do you mean all those you have testified about to-day?

Ans. I mean that I made just such as I testified to.

(Question repeated.)

Ques. 32. When you say "those that I spoke of," in your last answer, do you mean all those you have testified about to-day?

Ans. I mean those that I spoke of at the time.

Ques. 33. Are there any dashes or dash-feet mentioned in your present deposition which did not have or contain a provision for lateral adjustment? If there are, name them.

Ans. I made them for that purpose, for attaching to a dash.

(Question repeated.)

Ques. 34. Question 33 repeated.

Ans. I don't understand the question perfectly yet.

Ques. 35. What part of the question is it that you don't understand?

Question 32 reread to witness, whereupon he answers as follows:

34 Ans. Yes, sir; there were dashes made with solid feet.

Ques. 36. Which of the dashes mentioned by you in this deposition were made with solid feet?

Ans. None. I didn't mention no such thing as that.

Ques. 37. Do you mean that you didn't mention any such thing in your deposition—direct examination—or that you didn't mention any such thing in your answer preceding the last one that you gave?

Ans. I didn't mention anything of attaching a separate foot to a solid dash only by the way of repairing dashes that were broken with solid feet.

Ques. 38. Then, as I understand you now, you wish to be understood that wherever you attached a separate foot to a dash it was in the case of a repair job, where the dash-foot was in the first place welded to or in one piece with the dash frame and had been broken off through accident. Do you so wish to be understood?

Ans. I wish to be understood that I made them to repair where they were broken off, or to attach to one I made expressly for it.

Counsel for defendant thinks the witness does not understand question, and asks that it be more fully explained, wherefore counsel for plaintiff asks the following:

Ques. 39. Did you understand my cross-question 38?

Question 38 then was reread to witness, whereupon he answered:

Ans. I understand him; he wants to know how I attached those feet to those——

Ques. 40. The question 38 has reference to the kind of jobs
35 where the dash frames or feet contain provision for lateral adjustment. With this explanation, please answer question 38.

Ans. I have made them for different kinds of jobs, not just recollecting for what kind of jobs.

Ques. 41. Can't you state any of these kinds of jobs?

Ans. Buggies of different kinds.

Ques. 42. Buggies of what kinds?

Ans. Well, I have made them for drop-front buggies, piano boxes also, and buckboards.

Ques. 43. When and where did you make them for drop-front buggies?

Ans. Not just recollecting, I couldn't just say where.

Ques. 44. When and where did you make them for piano-box buggies?

Ans. That I couldn't just say where.

Ques. 45. If you can't recollect where tell me when you made them for piano-box buggies.

Ans. Couldn't just say that either.

Ques. 46. When and where did you make them for buckboards?

Ans. I made some for buckboards in Mishawaka, near as I can recollect, between '75 and '78; along there.

Ques. 47. State as nearly as you can the year in which you first made any dash for a vehicle whose feet were independent of the dash, and which dash was attached by a separate device to the body of the vehicle.

Ans. As near as I can recollect, between '50 and '55 and '6, along there.

Ques. 48. At what place did you make them?

Ans. La Porte, Indiana.

36 Ques. 49. State in your own way and in detail how you came to make this first said dash?

Ans. By repairing a dash that had been broken off; taking the dash that was broken off, turning up a foot, drilling a hole through it and through the dash also a hole, and bolting it back on the job again.

Ques. 50. What kind of a job was this?

Ans. Two-seated carriage.

Ques. 51. When was the job finished?

Ans. I couldn't just tell you when, not recollecting.

Ques. 52. Were you working for yourself at the time you repaired this foot?

Ans. No, sir.

Ques. 53. For whom were you working?

Ans. Bagley & Rose or Fisher and Brothers; I can't exactly recollect which.

Ques. 54. Was this one of the jobs which you have before referred to as containing a feature of lateral adjustability?

Ans. I hadn't referred to no such job to-day before, as I know of.

Ques. 55. Do you mean that you have not to-day before this referred to jobs where the dash or foot contained a provision for lateral adjustment?

Ans. I mean that I have made such feet.

Ques. 56. Question 55 repeated.

Ans. I mentioned it before, that I had made such ones.

Ques. 57. What do you mean by such ones?

Ans. I mean that I have made dashes for to be attached to vehicles with separate feet.

37 Ques. 58. Now, tell us when you first made a dash containing a provision for lateral adjustment, and where and when you made it, and for whom you were working at the time you made it.

Ans. I made it in La Porte, between '50 and '55, '6, & '7, thereabout, at Bagley and Rose's shop or Fisher Brothers—I couldn't exactly say which—as near as I can recollect.

Ques. 59. Describe the dash and tell us how you happened to make it. First describe it.

A. It was a carriage dash made out of five-eights oval iron; I made two for a man that they happened to suit; he *see* a dash that I had made and they happened to suit him, and he wanted me to make him two dashes. I asked him the width of his body; he said he didn't know the width of them; they were not built yet, and he wanted to take the dashes South with him. I went to work and built him two dashes, and made him those right and left feet, so as he could attach it to any width body that he wished. He paid me for them and took them, and I never saw him since.

Ques. 60. Describe the dash this man happened to see that you had made and that happened to suit him.

A. It was nice, straight, turkey-wing dash, with a scroll railing around it.

Ques. 61. Where did this man happen to see this nice dash?

Ans. On the fair ground, at La Porte.

Ques. 62. Was this nice dash on exhibition at the said fair ground?

38 Ans. I took it in there for that purpose; yes, sir.

Ques. 63. For whom were you exhibiting this nice dash?

Ans. For myself.

Ques. 64. Why was it that you made this nice dash?

Ans. I was finishing up a buggy and had to make a dash to it.

Ques. 65. Did you own this buggy?

Ans. No, sir.

Ques. 66. Who owned this buggy?

Ans. I think it was Fisher and Brothers or Bagley and Rose; I won't be positive which.

Ques. 67. Were you exhibiting this buggy for yourself or for them?

Ans. I wasn't exhibiting no buggy.

Ques. 68. Did you own this nice dash that was on this buggy?

Ans. No, sir,

Ques. 69. Who owned this nice dash?

Ans. It was either Fisher Brothers or Bagley & Rose; I disrecollect which.

Ques. 70. How was this nice dash attached to this buggy?

Ans. That was a solid foot-dash.

Ques. 71. What object did your bosses have in exhibiting this nice dash at the fair?

Ans. I never said that my bosses had any object whatever, nor never knowed they had ever exhibited a dash at the fair.

Ques. 72. Did you ever make more than one nice dash for exhibition at a fair in La Porte?

Ans. I have made a number of jobs that went there with dashes on.

Ques. 73. Referring to the two dashes and feet that you
39 made for this man mentioned in your answer to question 59, how many holes did you drill in the dash and how many holes did you drill in each of the separate feet?

Ans. Two and three, as near as I can recollect.

Ques. 74. Do I understand you by the words "two and three" that you mean that there were two holes in each dash and three holes in each foot?

Ans. I meant sometimes I would put two holes in the dash and sometimes three in each foot, or three in the dash and two in the foot, just as it happened.

Ques. 75. I am not referring in question 74 to what you sometimes did, but am referring to the dashes you made like the nice dash you exhibited at the said fair. What I want to know is how many holes you drilled in each of those dashes and how many holes you drilled in each of the feet which accompanied said dash.

Ans. I didn't make two dashes like the nice dash I exhibited at the fair. The dash I made for the fair was a solid foot-dash. The two dashes I made for the man that took them South were dashes for separate feet, with two or three holes drilled in dash and feet, as near as I can recollect.

Ques. 76. When you say two or three holes drilled in the dash and feet do you mean that there were two or three holes drilled in each of these two dashes in the lower bar of each dash, and that each foot had two or three holes drilled in the upper end or L portion of it?

Ans. Yes, sir.

Ques. 77. When you say there were two or three holes
40 drilled in the lower bar of the dash do you mean that there were two or three bored at each end of the dash, making, respectively, four or six holes in the dashe's lower bar, or that the lower bar contained only two or three holes altogether?

Ans. I mean that I bored two or three holes in each end of the dash; also in each foot.

Ques. 78. You mean three holes in the upper or L end of each foot, do you not?

Ans. Of course, I do, sir.

Ques. 79. After you made these two dashes for this man, who paid you and took them away, when, if at all, did you next make a dash or feet containing provision for lateral adjustment? Also state where and for whom you made same and the circumstances which led to your making it.

Ans. As near as I can recollect, for Wood, Eberhart and Nutt, Mishawaka, Indiana; as near as I can recollect, it was between '65, '7, and '8; along there some time. I don't know of any particular circumstances. I was ordered to make a couple of dashes, and I made them.

Ques. 80. Describe these.

Ans. I think they were made for a couple of buckboards, as near as I can recollect. I made the two dashes for separable feet.

Ques. 81. Why did you make them with separable feet?

Ans. Because, I think, the bottom of the buckboards wasn't made yet, and through some cause or another by—the trimmer was going to go away, and if he had the dashes he could trim them right up and they could be used at any time afterwards.

41 Ques. 82. How was the lower bar of each dash made?

Ans. Made with a square flat place on it to receive a separate foot, the same as shown in a draught shown to me to-day.

Ques. 83. How was the lower bar of each of these dashes drilled?

Ans. Drilled with one, two, and three holes in it.

Ques. 84. How do you mean with one, two, or three holes?

Ans. I mean we bored that many holes in the dash.

Ques. 85. How many holes did you bore at each end of the dash in the lower bar?

Ans. One, two, and three; sometimes I would vary.

Ques. 86. I am referring in my questions now to these two dashes, having provision for lateral adjustment and made for these two buckboards at Mishawaka, and with this in mind you will please answer my question 85.

Ans. As near as I can recollect—I won't say positive which—two or three.

Ques. 87. How many holes did you bore in the upper end of each of the feet made for these two buckboards, and was the upper end of each foot bent in the form of an L?

Ans. I can't recollect just how many holes—two or three, though—and the upper end of the foot bent in the form of an L or F, just as you have it.

Ques. 88. What became of these buckboard dashes?

Ans. As near as I can recollect, I presume they were put on the buckboards and used after they were made.

Ques. 89. Then these dashes made for these two buckboards
42 were made alike in size and each of these dashes contained at each end, in its lower bar, at least two holes for enabling the foot to be laterally adjusted on the dash. Was this the fact?

Ans. They were made, as near as I can recollect, one size, and, as I said before, two or three holes in, as near as I can recollect.

Ques. 90. The last part of the previous question repeated.

Ans. As near as I can recollect, two or three holes were put in them.

Ques. 91. Of what size and shape of iron was the corner piece of each of these dashes made? I refer to the part which contain the holes for the attachment of the feet.

Ans. They were made of flat iron from an inch to an inch and an eig-th by a quarter to five-sixteenths thick, the balance being five-eighths oval iron.

Ques. 92. Then, as I understand you, the corners were made of flat iron and were welded to five-eighths oval iron?

Ans. Yes, sir; or five-eighths oval iron welded to that, either one.

Ques. 93. How long was this piece of flat corner iron?

Ans. Vary from two to two and a half inches.

Ques. 94. The frame everywhere, except at the corners, was of five-eighths oval iron; is that correct?

Ans. Yes, sir.

Ques. 95. Who was this trimmer who was going away?

Ans. Mr. Post.

Ques. 96. Where does he live?

Ans. Close to Elkhart, if I am not mistaken.

Ques. 97. Was there more than one man by the name of
43 Post who worked as trimmer at that time while you worked at Mishawaka?

Ans. Not as I know of.

Ques. 98. How many times did you work at Mishawaka?

Ans. I couldn't just say how many times. I worked at Mishawaka two or three years, off and on.

Ques. 99. Did you work at Mishawaka after 1858?

Ans. Yes, sir.

Ques. 100. When?

Ans. Between the years 1864, '65, and '68, along there.

Ques. 101. For whom did you work between the years '64 and '68, at Mishawaka?

Ans. Wood, Eberhart & Nutt, when I worked there.

Ques. 102. When you say you worked "there," do you mean at Mishawaka?

Ans. When I worked at Mishawaka I worked there between the years '74, '5, '7, and '8, along there.

Ques. 103. What I want to know is this, for whom did you work whenever you worked at Mishawaka?

Ans. I worked for Wood, Eberhart and Nutt.

Ques. 104. How many fires did Wood, Eberhart and Nutt have when you worked for them?

Ans. They run two part of the time and part of the time three.

Ques. 105. Who were the other blacksmiths who worked for Wood, Eberhart and Nutt while you worked at Mishawaka?

Ans. If I remember rightly, there were two or three worked there

while I did; one by the name of Morris Ashton, one man I disrecollect entirely, and, I think, Count S. Steele another one.

Ques. 106. What were the first names of the men who composed the firm of Wood, Eberhart and Nutt?

44 Ans. James Nutt, John Eberhart, and I disrecollect Mr. Wood's first name.

Ques. 107. What part of the business did Mr. Wood tend to?

Ans. He was a painter.

Ques. 108. Did Mr. John Eberhart have the oversight of and did he attend to the work of the various departments of the factory?

Ans. Part of the time he did and part of the time Mr. Nutt or Mr. Wood would, just as they were there.

Ques. 109. State when, if at all, after you made these two dashes for buckboards at Mishawaka, you made dashes or feet containing provisions for lateral adjustment, when and for whom you made the same, the circumstances which led you to make same; also describe same.

Ans. I just couldn't state when. I am not keeping dates. I couldn't tell exactly when; in this town for some; for myself and repaired the same kind for Evan Livery Stable; being broke and had to repair them; a dash made of a solid foot was broke and I made a separate foot and replaced it.

Ques. 110. Repeat former question with the request that you be particular as to the time when.

Ans. As I said before, I couldn't give no exact date, not keeping a written record of the time, as near as I can say.

Ques. 111. Give the time when asked for in the question preceding the last, as near as you can.

Ans. A number of different times since that; not later than last week I repaired a dash of that description on our own buggies in this town.

Ques. 112. Why can't you be more definite as to the time?

45 Ans. As many others; don't just recollect it or don't date it down; not keeping no books of my own, I don't recollect.

Ques. 113. Have you now told us all the instances you know of where dash or feet contained provision for lateral adjustment?

Ans. As near as I can recollect.

Ques. 114. Will you please give us the full name of the Doctor Grimes you have mentioned, and also of the Mr. Shank you have mentioned; also tell us where each of these gentlemen lived at the time you made said laterally-adjustable dashes for them.

Ans. I couldn't tell you the full name of Doctor Grimes, and I think Mr. Shank's first name was John—not positive; Mr. Grimes living in Mishawaka, and not positive, but think Mr. Shank lived in the country.

Ques. 115. Was there more than one Doctor Grimes living in Mishawaka at the time you made said laterally-adjustable dash for him?

Ans. No, sir; There was only one Doctor Grimes living there, and remember I didn't make no dash for him; I made it for Wood, Eberhart & Nutt, as I worked for them at the time.

Ques. 116. Describe the laterally-adjustable dash and its attachments, which went to Doctor Grimes.

Ans. There were two dashes made near one size, as I recollect, with flat spaces to receive the holes, with five-eighth oval iron welded to it, and the feet with an F or L end turned right and left, as I described before, the end of the dash being a flat space or
46 corner, about two *two* and a half inches long, inch to inch, and an eighth wide, and from a quarter to five-sixteenths thick, with one, two, or three holes drilled in it; two or three holes in the feet.

Ques. 117. Do you mean that the upper or the lower end of these feet were turned to the right and left?

Ans. The upper ends, of course.

Ques. 118. Why do you say with one, two, or three holes drilled in the corner or flat piece of the lower bar?

Ans. So as we can make it fit any width; if one hole won't fit the next one will.

Ques. 119. Were the three holes in the corner piece of the lower bar in the dashes that went to Doctor Grimes—that is to say, were there six holes in the lower bar of each of said dashes?

Ans. As near as I can recollect, for the dashes I made for Wood, Eberhart & Nutt there were two or three holes in them; in dash and feet also.

Ques. 120. Question 119 repeated.

Ans. As near as I can recollect, as I said before, there were two or three holes in the ends of each dash and in the feet also, to the best of my knowledge, at this time.

Ques. 121. Do you mean that there were two or three holes in each end of each lower bar of each dash that went to Doctor Grimes?

Ans. I mean and say here on oath that there were two or three holes in each end of those dashes I made for Wood, Eberhart & Nutt, to the best of my knowledge at this time.

Ques. 122. In your last answer you speak of those dashes you
47 made for Wood, Eberhart & Nutt; do you mean those dashes that went to Doctor Grimes?

Ans. One, I think, was made for Doctor Grimes, not knowing who the other one went to.

Ques. 123. What kind of a vehicle was it to which this dash made for Doctor Grimes was attached?

Ans. A vehicle that Doctor Grimes got was a buckboard.

Ques. 124. Question repeated.

Ans. It was a buckboard.

Ques. 125. What kind of a vehicle was it to which the dash made for Mr. Shank was attached?

Ans. As close as I can recollect, it was a drop-front buggy, not being positive.

Ques. 126. Was the buckboard Doctor Grimes got a new or old job?

Ans. The buckboard that Wood, Eberhart and Nutt built for Doctor Grimes was a new one.

Ques. 127. Was this new buckboard that Wood, Eberhart and

Nutt built for Doctor Grimes the same one to which this laterally-adjustable dash was attached, and was this attached to it at the time it was built?

Ans. I think it was, sir, as near as I can recollect; no, sir; the dash was not attached at the time it was built.

Ques. 128. Where was this laterally-adjustable dash for Doctor Grimes attached to this buckboard, and under what circumstances?

Ans. I couldn't tell exactly when it was; after they got it done, I presume. What do you mean by "under what circumstances?"

Ques. 129. I mean why was this laterally-adjustable dash attached to this buckboard of Doctor Grimes?

48 Ans. Because we put dashes on all jobs, if I understand the question right.

Ques. 130. Did you put laterally-adjustable dashes on all jobs?

Ans. No, sir.

Ques. 131. Question 129 repeated.

Ans. Because the buckboard wasn't made yet, so that I made the dashes with separate feet so as to fit any width board or body they would make.

Ques. 132. And why did you put a laterally-adjustable dash on the drop-front buggy of Mr. Shank?

Ans. I don't recollect any more exactly why, whether it was on account of Mr. Post leaving there or not; as near as I can recollect.

Ques. 133. Was this drop-front buggy of Mr. Shank, to which the laterally-adjustable dash was attached, a new or old job, and at what time during the life of said buggy was the said dash attached?

Ans. It was a new job they were to build for him. I couldn't just tell you when the dash was attached, not recollecting.

Ques. 134. At the time that lateral adjustable dash was put on the buckboard of Doctor Grimes was there any other lateral adjustable dash made? And, if yea, state why it was made, for what kind of a vehicle, and whether it was made in advance of the completion of the vehicle or not; also describe said dash and its attachments.

Ans. On or about the time those two dashes spoken of for the buckboards I made another one for a job, spoken of before as the Shank buggy. Not recollecting exactly if the body was built before or

49 not, couldn't say exactly why it was made, whether it was on account of Mr. Post, the trimmer, leaving there or not. I think, as near as I can judge and recollect, it was for a drop-front top buggy. I could not say for sure whether it was made in advance or not. The dash was same as I have described here before as made for the buckboard, each corner of the dash being flat space two to two and a half inches long by inch to inch and an eighth wide by a quarter to five-sixteenths thick, having one, two, and three holes drilled in each end of the lower bar of the —, in the flat end; the feet to the dash, L or F shape, turned up right and left; one, two, and three holes in each foot, in the upper end.

Ques. 135. What was about the age of this Mr. Shank, and what was his business?

(Objected to as irrelevant & immaterial.)

Ans. Not knowing, I couldn't say.

Ques. 136. In all of these lateral adjustable dashes you have mentioned were the two and three holes drilled in each end of the lower bar before the frames were covered, so that they, the frames, would be laterally adjustable as you have stated?

Ans. Those that I made I drilled immediately.

Ques. 137. Then you drilled these holes in the frames before the frames were covered; is that right?

Ans. Yes, sir.

Ques. 138. When you received pay for those two dashes you made for that man who wanted you to make said dashes like the nice dash you exhibited at the fair, in what kind of currency did he pay
50 you, and did you retain the money or not; if not, to whom did you pay it?

(Objected to as irrelevant and immaterial.)

Ans. He paid me in gold; I retained the money.

Ques. 139. In whose shop were these last-named dashes made?

Ans. If I recollect right, in James Shaw's shop, in La Porte.

Ques. 140. What is your present business?

(Objected to as having been answered in first question of this deposition.)

Ans. Blacksmithing and running a livery stable.

Ques. 141. Whose livery stable is it?

(Objected to as irrelevant and immaterial.)

Ans. Thomas Evans.

Ques. 142. Have you seen the letters patent or a copy of same granted to Joseph W. Brown and numbered 204,530, and relating to dash-feet? And, if you have, state when you saw and examined them.

(Same objection.)

Ans. Not as I know of, unless it was the copy I see here to-day.

Ques. 143. Referring to the lateral adjustable dashes made for the two buckboards, when the trimmer was going away, I understand that the dash frames were covered as soon as made and before the bodies or bed portions of the vehicles were made; is this the fact?

(Same objection.)

Ans. I don't just recollect.

Cross-examination concluded, and the further taking of testimony adjourned till 8.30 a. m. of January 31st, 1884.

Examination continued at 8.30 a. m., Jan'y 31st, 1884.

51 Redirect examination by Mr. RECTOR:

Ques. 144. In answer to cross-question 82, referring to the dashes made by you at Mishawaka between the years 1865 and 1868, you say that they were made "with a square, flat place on them to re-

ceive a separate foot the same as shown in the draught shown me to-day;" to what draught do you refer?

Ans. Refer to a draught you showed me yesterday in the room here.

Ques. 145. Was that draught referred to in the deposition?

Ans. Yes, sir.

Ques. 146. For what firms in La Porte, Indiana, if any, excepting the firms of Fisher and Brothers and Bagley and Rose, did you work between the years 1850 and '56?

Ans. I worked for Fosdick & Co., for a man by the name of Shaw; also for a man by the name of William Dunn.

Ques. 147. In answer to cross-question 100 and in various other parts of your deposition you state that you worked at Mishawaka between the years 1864 & '8, and in answer to cross-questions 46 and 102 you say you worked there between the years 1874 & '8; did you work there at each of these times; if not, which of the dates is correct?

Ans. If I said I worked there in 1874 to '8 it was a mistake. I worked there in 1864 to '8—along there, as I understand it.

Ques. 148. Did you ever work at Mishawaka after the year 1868?

Ans. No, sir.

Ques. 149. Were all the dashes referred to by you in your
52 deposition as having been made by you at Mishawaka made between the years 1864 & '8?

Ans. As near as I can recollect.

Recross-examination by Mr. FISHER:

Ques. 150. In the case mentioned in your present deposition of the two buckboards where the dashes were made in advance because the trimmer was going away, in your former testimony you said the feet were made by simply turning up the end with one hole in each end of the turned-up part of the foot, you got the lateral adjustability of the feet on the dash simply by the two holes in each end of the dash; is that correct?

Ans. I don't recollect of just speaking such words. I said there were one, two, and three holes drilled in each end of the dash and feet also.

Ques. 151. In the dashes having holes, which you say were for lateral adjustment, were these holes placed in the same vertical plane?

Ans. Those dashes I made were one, two, and three holes, drilled in the flat part of each end of the dash and feet.

Ques. 152. Question 151 repeated.

Counsel for defendants suggests that the witness does not understand what is meant by "placed in the same vertical plane," and asks that it be explained to him.

Counsel for complainant objects to the suggestion, as the witness has not stated that he doesn't understand the question, neither does his last answer indicate that he did not understand the question.

Ans. They were placed in the flat ends of each dash and the feet.

53 Ques. 153. What does the word lateral mean?

Ans. I suppose it means a changeable foot or something of that kind; I don't know exactly.

Ques. 154. What does the word vertical mean?

Ans. I presume that means changeable—something of that kind.

Ques. 155. In view of the foregoing answers, please answer question 151.

Ans. As I have said before, I drilled my holes in the lower end of the dashes.

Ques. 156. Why can't you answer my questisn 151 by yes or no?

Ans. They were drilled in the dashes, as I said before; that is all I can answer to the best of my knowledge.

Ques. 157. Question 151 repeated.

(Counsel for defendants objects to question being repeated, as witness says in his last answer above he has answered to the best of his knowledge.)

Ans. As I have mentioned heretofore, to the best of my knowledge those holes were drilled in each end of the lower bar of each dash.

Ques. 158. Who covered the dashes that were made at La Porte that went South?

Ans. They wasn't covered as I know of.

Ques. 159. Was James Nutt in the firm of Wood, Eberhart and Nutt all the time you worked for that firm?

(Objected to as irrelevant.)

Ans. I couldn't just recollect.

Ques. 160. Was the firm known by the name of Wood, Eberhart & Co. the same firm as that known as Wood, Eberhart & Nutt?

(Same objection.)

54 Ans. I paid no attention in knowing exactly in regard to the names of the firms; it went by the name of Wood, Eberhart & Nutt, as far as I know.

Ques. 161. Are you the same William Rentfrow who testified at Cincinnati, Ohio, in the fore part of the year 1881, on behalf of the respondents in the case of George M. Peters *vs.* Austin *et al.*, and in the case of George M. Peters *et al. vs.* Austin *et al.*, U. S. circuit court for northern district of Illinois, in equity?

Ans. Yes, sir.

Redirect examination by Mr. RECTOR:

Ques. 162. In all the dashes referred to by you in your deposition which had two or more holes in each end of the lower bar of the dash, were these holes side by side or one above the other?

(Objected to as leading.)

Ans. They were side by side.

Ques. 163. Were the holes which you state were made in the upper part of the dash-feet side by side or one above the other?

Ans. Side by side.

Recross-examination by Mr. FISHER:

Ques. 164. How long and how wide and thick was this upper end of the dash-feet which received these holes placed side by side?

Ans. From two to two and a half inches, more or less, long; from inch to inch and an eighth wide; from quarter to five-sixteenths thick.

Ques. 165. Did this upper end run horizontally or vertically?

(Objected to as improper recross-examination.)

Ans. That upper end—as I show a draught here in my hand, the upper end of the dash-foot turned right and left.

WILLIAM RENTFROW.

55 ALBERT C. POST, a witness produced on behalf of the defendants, being duly sworn, deposeth and saith, in answer to interrogatories propounded to him by EDWARD W. RECTOR, Esq., representing Stem & Peck, of counsel for the defendants, as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. Albert C. Post; 51 years; Penn township, St. Joe county, Indiana; farming.

Ques. 2. Where were you living in the years 1864 and 1868, and what was your occupation at that time?

Ans. Mishawaka, St. Joe county; my occupation at that time was carriage trimming.

Ques. 3. What was the name of the firm by whom you were employed at Mishawaka during those years?

Ans. Wood, Eberhart and Nutt.

Ques. 4. What opportunities did you have for learning the construction of the dashes made by that firm, and were you familiar with the construction of the dashes made by them during those years?

Ans. I covered them and put them onto the vehicles they were made for; I was familiar with the construction of the dashes made by them.

Ques. 5. State whether or not during those years that firm made any footless dashes with separate feet for attaching them to vehicles.

Ans. They did.

Ques. 6. State whether or not they made any dashes during those years having provision for lateral adjustment for the purpose of attaching them to vehicles of different widths.

Ans. They did.

56 Ques. 7. Please describe those dashes and the means for connecting them to vehicles of different widths.

Ans. The dash was fitted for the front of the body which they were attached to, and holes were drilled in the lower rod of the dash to attach the foot to them.

Ques. 8. How many holes were drilled in the lower bar of the dash, and at what part of the lower bar were the holes drilled?

Ans. They were drilled sufficient distance from the out end to attach the foot to them; I think some two inches or two and a half; from two to six holes.

Ques. 9. For whom did the firm of Wood, Eberhart & Nutt make such dashes having laterally-adjustable feet or attachments, between the years 1864 & '8?

Ans. They made one for Doctor Grimes; they made one to go to a repair job belonging to a Dunkard; I can't give his name; they made one for a phaeton for Shank; they made other jobs for their trade. I can't tell you anything about them. Some were shipped South and West.

Ques. 10. What kind of a vehicle was it which was made for Doctor Grimes and to which the dash having laterally-adjustable feet or attachments was connected?

Ans. They are called a buckboard.

Ques. 11. Please describe the dash and its means of connection to this vehicle made for Doctor Grimes.

Ans. It's a square frame with the feet bolted to the lower rod and bolted to the buckboard.

Ques. 12. How was it capable of being attached to vehicles of different widths?

Ans. As far as this is concerned, of the buckboard, I don't
57 recollect whether there was more than one hole or not; I have no recollections of it.

Ques. 13. What kind of a vehicle was the one made for the Dunkard?

Ans. It's what he called a family carriage—a standing top and foot board on the front.

Ques. 14. Was it a new or an old vehicle?

Ans. It was an old vehicle.

Ques. 15. Did Wood, Eberhart & Nutt make the vehicle?

Ans. Not to my knowledge.

Ques. 16. How did they come to make the dash for it?

Ans. It had a wooden dash on. It got broke off, and he had the leather dash, as we term it, made and put on, with an apron in.

Ques. 17. Please describe the dash which Wood, Eberhart & Nutt made for that vehicle, and how it was attached to it.

Ans. It was a square dash, with two upright bars. The feet were bolted onto the dash between the two bars. There was, in the first place, four holes made, two at each end, probably an eighth and an sixteenth or maybe a quarter of an inch apart. When we come to attach the dash to the vehicle the bolts running through the front end of the body that held the foot board on was in the way, and in order to get it on we had to drill another hole to the left end of the dash, to the left of the other holes which had been made previously, and moved the foot to the left.

Ques. 18. Why were two holes originally made in each end of the dash, and in what part of each end of the dash were these two holes?

Ans. So that the feet could be moved either way. The holes were between the two upright bars.

Ques. 19. Were they in the lower bar of the dash?

58 Ans. They were.

Ques. 20. What was the shape of the lower bar of the dash at each end in which the two holes were drilled?

Ans. The lower bar was one size clear through, one-sixteenth heavier than the upright bars.

Ques. 21. Please describe the feet by which this dash was attached to the vehicle.

Ans. They were made with three corners so as to project over the top edge of the box and bolting to the dash so as to bring the leather of the dash on the outside of the body.

Ques. 22. Was there more than one hole drilled in the upper part of the dash feet?

Ans. But one in the upper part, three holes in each foot.

Ques. 23. What circumstances, if any, cause you to remember particularly the dash made for this Dunkard?

Ans. The only thing was that we had to have another hole drilled in after the dash was covered, on account of the bolts running through the front end of the body. We had to move the left-hand foot to the left in order to miss the bolts that held the foot board on.

Ques. 24. In what year was this dash made for the Dunkard?

Ans. I think it was in '68.

Ques. 25. Do you know the name of this man?

Ans. I do not, sir.

Ques. 26. In what year did you leave the employ of Wood, Eberhart & Nutt?

Ans. I think it was in '69.

Ques. 27. What kind of a vehicle was it to which the dash made for Mr. Shank was attached?

59 Ans. It was a phaeton, I think.

Ques. 28. Was it a new one, made at the same time the dash was made, and by whom was it made?

Ans. It was a new buggy all through; made by Wood, Eberhart & Nutt; it was made at the same time the dash was made; the body was made first.

Ques. 29. Please describe the dash made for this vehicle and the manner in which it was attached to it.

Ans. It was made with a rod running around the out ends and top, and the feet were bolted between the upright bar and the out-end rod, and there were four feet, as you might say, that attached the dash to the body; there was a foot on the under side of the body sill and a foot on the upper side of the body sill. Those feet were attached by way of a slot in the lower bar.

Ques. 30. Was this slot in the lower bar of the dash, and how many slots were there in it?

Ans. Yes, sir; there were two.

Ques. 31. At what part of the lower bar of the dash were these slots made, and for what purpose were they made—instead of holes?

Ans. They were made between the inside of the upright bar and the outside rod; they were better about adjusting the feet. There were two holes drilled in the first place, and then a punch was made

and punched out between the two holes, making a slot or an oblong hole.

Ques. 32. Did this slot run horizontally or vertically?

Ans. It ran lengthways—the same way as the rod.

Ques. 33. In what year was this dash you have just described made?

60 Ans. I don't remember whether it was made in '68 or '69; I think, though, it was made in '68.

Ques. 34. Please state whether or not while you were in the employ of Wood, Eberhart & Nutt they made any other dashes having a slot or more than one hole in each end of the lower bar of the dash for the purpose of connecting them by separate feet to vehicles of different widths.

Ans. They did.

Ques. 35. Do you remember the names of any of the parties for whom they made such dashes?

Ans. I do not; they were made for the trade.

Ques. 36. I now show you complainant's patent No. 213,529, of March 25th, 1879, and, referring particularly to figure 1, ask you to state wherein the construction therein shown and the manner of connecting the dash to the vehicle compares with or differs from the dash you have testified to as having been made for Mr. Shank.

Ans. On Mr. Shank's was a double foot; the object of that was to make the upper as light as we could on account of having the sill to cover. It was made with a square corner instead of the slope there is in these feet (referring to drawing). The foot on the under side of the body sill came up and attached to the lower rod of the dash and then made a turn there on the outside to form a brace, and it attached to the second upright bar a little over half the distance above, forming a brace on the outside of the dash.

Ques. 37. Referring to its adjustability from side to side to

61 accommodate it to vehicles of different widths, please state wherein the construction shown in the patent before you differs from that of the dash made for Mr. Shank.

(Objected to as leading.)

Ans. The slot is in the lower bar.

Ques. 38. Is that the only difference?

Ans. Yes, sir.

Ques. 39. Referring to the construction enabling the dash to be attached by the separable feet to vehicles of different widths, how does that shown in patent before you resemble or differ from that of the dash made for the Dunkard?

Ans. The dash made for the Dunkard was with two upright bars at each end—one bar across the top and one across the bottom—the bottom bar being a little heavier than the upper bar or end bars. The feet, of course, were made in different forms from this, but answering the same purpose.

Ques. 40. In question 39 I asked you to state the resemblance or difference in the means for attaching the dashes to vehicles of different widths. Please now state what it is.

Ans. Differ not materially. They were made with three shoulders in order to fit the body. The body, as near as I can recollect, was seven or eight inches deep, and the foot of the dash was made to fit the height and thickness of the body.

Ques. 41. The drawing annexed to the copy of the patent before you shows a flat bearing at each of the lower corners of the dash, with slots in each of the bearings for attaching the dash to vehicles of different widths. Please state how the construction of the
62 dash made for the Dunkard resembled or differed from that shown in the drawing.

Ans. That for the Dunkard was made with holes through the lower rod. There were, in the first place, four holes drilled, two in each end. When we came to attach the dash there had to be a third hole drilled at the left-hand end in order to miss the bolts in the front end of the body that held the foot board up.

Ques. 42. Please state whether or not these holes were made for and served the same purpose as the slot shown in the drawing referred to.

(Objected to as leading.)

Ans. They answered the same purpose, or nearly the same.

Cross-examination by Mr. FISHER:

Ques. 43. How long did you live at Mishawaka; how long did you work there; was your stay there continuous, or did you live there a number of times? If yea, state fully the number of times, duration, and when.

Ans. A little over five years. During that time I worked for H. R. Gaston, at Indianapolis. I worked three or four times, for short periods, for Studebakers, at South Bend. My family remained in Mishawaka the five years and a little over; I was there the whole time with those exceptions. I lived there but once; I think it was in '65 or '66 that I moved there.

Ques. 44. When did the absences from Mishawaka, mentioned in your last answer, occur?

Ans. I can't tell you exactly the year I worked at Gaston's. I trimmed four jobs for him for the State fair. I helped Stude-
63 bakers in the falls of '65, '66, & '67; I guess, as near as I can recollect, I helped them on their fair work.

Ques. 45. Did you work for Wood, Eberhart & Nutt during all the time you lived at Mishawaka, excepting the periods mentioned in answer to cross-question 43?

Ans. I worked the first summer for Chapin and Graham. I worked for Wood, Eberhart & Nutt the balance of the time.

Ques. 46. What part of the work at Wood, Eberhart & Nutt's did you do?

Ans. Trimming buggies and carriages.

Ques. 47. Were you the only trimmer Wood, Eberhart and Nutt employed while you worked for them; if not, who else worked for them and how long and when?

Ans. I was the only one, with the exception of an apprentice,

John Gully. I think he worked about two years. I think it was in '67 & '8.

(Adjourned to 1 p. m.)

At opening witness asked permission to correct a statement made by him as regards the time he worked for Wood, Eberhart and Nutt, so as to read as follows: I stated that I worked for them for five years, with the exception of one time when I worked for Gaston, Studebakers, and Chapin and Graham. Now, the last year I was at Mishawaka I was connected with what is called "the Union shop," and I worked there the last eleven months. I think that I lived in Mishawaka. I think I left Mishawaka in '69.

Ques. 48. Referring to the dash that you made and fitted
64 to the vehicle made for Doctor Grimes, you say, in answer to question 12, "I don't recollect whether there was more than one hole or not. I have no recollections of it." What portion do you refer to as having this hole?

Ans. Two holes I stated. There was a hole in each end of the lower rod of the dash. I am not positive whether there were any more or not, because the feet fitted. There might have been more, but I am not positive.

Ques. 49. Who trimmed this dash?

Ans. I did.

Ques. 50. You say the feet fitted; how did you know this?

Ans. Because I bolted the feet to the buckboard and the dash to the feet.

Ques. 51. Then, as I understand you, the feet fitted to the dash after the latter was trimmed, and the feet also fitted the vehicle the first time you connected them together after you had trimmed the dash, there being one hole at each end of the lower bar of the dash, and that if there had been any misfit between the dash and feet and vehicle you would have known of it, and also of the necessity of boring a second hole at each end of the dash to correct said misfit. Is this what you mean to have us understand?

Ans. That is what I mean. There may have been more than one hole, but I don't recollect of it. The holes were near the ends.

Ques. 52. Referring to the connection between this Grimes dash and the vehicle, was there a hole or holes in the upper end of each of the feet connecting said dash to said buckboard?

Ans. I am not positive whether it was a round hole or an
65 oblong one. There was one in the upper end of each foot attached to the dash.

Ques. 53. Was there more than one hole in the upper end of each of said feet?

Ans. I think not.

Ques. 54. State as nearly as you can the shape and size of the upper end of each of the feet connecting said Grimes dash to said buckboard.

Ans. Shape of an L, and it may have been a quarter of an inch thick, more or less, by an inch or seven-eighths wide, and the height from the board to the top of the foot, where it connects with the

dash, I am not positive nor accurate about it, but should judge in the neighborhood of two inches.

Ques. 55. Then, as I understand, the foot consisted of a long lower position, lying substantially horizontal, that was connected to the body of the buckboard, and an upright portion of about two inches in length connected to the front end of this lower portion, and in the upper end of this upright portion there was a single hole to receive a bolt for connecting the dash to the foot, and that the only angle in said foot occurred at the junction of the flat lower part attached to the vehicle, and the upright part which was attached to the dash. Is this a correct description of each of the said feet?

Ans. Yes, sir.

Ques. 56. Referring to the dash made by Wood, Eberhart & Nutt for the Dunkard job, standing-top family carriage, I understand that at each end of the dash there were two parallel upright bars connected at their upper ends to a cross-rod, which formed the top of the dash frame, and at their lower ends welded to a cross,
66 horizontal rod forming the bottom of the dash frame. Is that a correct description of the frame of said dash?

Ans. Correct, with the exception of the cross. They did not cross. The upright bars were welded to the lower bar. The upright bar did not run below the bottom bar.

Ques. 57. If I recollect aright, you said there were four holes drilled in the bottom rod of this dash; how did they come to be drilled there?

Ans. I said there were five.

Ques. 58. Yes; I know you said there were five at the last, but my question refers to the occasion for boring the four holes that were in the lower bar of the said dash before you bored the extra one.

Ans. In the first place, the vehicle had a wooden dash with wooden standards. One of the standards became broke and the panel of the dash was split off—broken. The job was brought to the shop for repairs. Mr. William Rentfrow was ordered to take the measure while they were doing the necessary wood repairs for that vehicle. Then Mr. Rentfrow went to work and made the necessary iron frame work for the dash outside of the feet. When they got through with the wood repairs the vehicle was drawn to the blacksmith shop door, and he went to work and drilled the holes, two of them at each end, between the two upright bars. After that was done the dash frame was brought into the trimming shop for me to cover; and, after the job was taken to the blacksmith shop, Mr. Rentfrow went to work and made the feet, and the object of the two holes was in order to move the feet either right or left. When we came to attach
67 the dash to the body we had to drill another hole on account of the bolts running through the front end of the body and had to move the left-hand foot to the left.

Ques. 59. If Mr. Rentfrow took the measure of the vehicle, as you say he did, why did he need to bore four holes instead of two in the dash?

Ans. So that if necessary they could move the feet either right or left.

Ques. 60. When the dash was placed on the vehicle and attached thereto by these separable feet, how far was the right-hand foot from its side of the vehicle and how far was the left-hand foot from its side of the vehicle?

Ans. The right-hand foot was, as near as I can recollect, about an inch and a half. The left-hand foot was half an inch or three-quarters. The foot board, not being bolted on equally, was the cause of moving the left-hand foot to the left—past the bolt-heads of the foot board.

Ques. 61. And was this the reason why Mr. Rentfrow drilled an extra set of holes in the dash?

Ans. He drilled four holes in the dash when he made it, two at each end, between the two upright bars. The object of the fifth hole was to move the foot farther to the left.

Ques. 62. Was this extra or fifth hole bored inside or outside of the two holes, at its end of the lower bar?

Ans. It was bored to the left, as I have stated three or four times.

Ques. 63. At one end of said dash there were only two holes. In which of these last-named two was the bolt which attached the foot to the dash?

Ans. The two holes were drilled in the right-hand end of
68 the dash, between the two upright bars; the bolt passing through the dash into the foot was in the outside hole.

Ques. 64. How wide was the foot board?

(Objected to as irrelevant and immaterial.)

Ans. I should judge about eight inches.

Ques. 65. How long was this foot board?

(Same objection.)

Ans. Long as the body was wide.

The complainant, through his counsel, observing the witness since the last answer was made talking privately with the gentleman (the counsel for respondents), hereby enters protest against such interview.

Ques. 66. You say the lower ends of the uprights of the dashes mentioned in your foregoing deposition were welded to the rod which formed the bottom rail of the dash. Please give us the shape and size of this bottom rod.

Ans. It was an oval rod, and, I should judge, maybe three-quarters or seven-eighths wide; can't give thickness; I think about three-eighths thick.

Ques. 67. What was the size of the rod which formed the top of the dash frame and what was the size of the rods which formed the uprights of said frame?

Ans. I think about five-eighths; the uprights the same size. This is to the best of my recollection.

Ques. 68. You have previously stated this bottom rod was only

one-sixteenth larger than the balance of the dash-frame rods. How is this?

Ans. I might on some jobs. I don't know that I did. As far as that is concerned, it matters nothing. It has been some time
69 since I worked at those, and I never paid any particular attention to the size of the iron used in the dash, unless I was asked something about it, and then I never measured them, but would go to the iron pile and pick out the iron I thought best suited for it.

Ques. 69. You say it does not matter as to what the size of the lower bar is; what do you mean by this?

Ans. I mean I don't know as it makes any difference whether it's an eighth or sixteenth of an inch.

Ques. 70. What was the size of the holes in the lower bar of the dash which received the bolt for the attachment of the foot to the dash? I am not now referring to the phaeton for Shank, but to the Grimes and Dunkard repair job dash.

Ans. I can't tell you exactly; I think in the neighborhood of quarter of an inch; as small as we could to have a bolt sufficient to hold.

Ques. 71. In this family standing-top carriage of the Dunkard were there any upright posts at the front of the vehicle body? If yea, describe them.

Ans. I think not; I think the front post was at the front of the front seat.

Ques. 72. When you speak of the left end of the dash and the left side of the vehicle do you describe it as if you were sitting in the vehicle looking towards the horse, or how?

Ans. Sitting in the vehicle looking towards the horse.

Ques. 72. How do you happen to recollect that it was in the left end of the dash that the extra fifth hole was bored?

Ans. Because I had the right-hand foot all bolted on, and
70 went to bolt the left-hand foot and couldn't on account of the bolts running through the foot piece.

Ques. 74. Did you then and there bore the extra fifth hole?

Ans. Afterwards took the dash to the blacksmith shop and had the fifth hole drilled in.

Ques. 75. To whom did you take the dash to have the fifth hole drilled in it, and who drilled said hole?

Ans. I think I told Mr. Rentfrow, and I think his helper drilled the hole.

Ques. 76. This extra fifth hole was drilled through the leather and through the iron with an ordinary drill, in the ordinary manner of drilling holes; was this the fact?

Ans. No, sir; it was drilled with what they call a breast drill.

Ques. 77. Referring to the phaeton made for Shank, as I understand your description of the dash made by Wood, Eberhart & Nutt for that vehicle it was as follows: The upper part of the dash frame was composed of two horizontal parallel rods and the lower or bottom portion of said frame was composed likewise of two horizontal parallel rods, and at each end of the dash these horizontal rods

were connected to an upright rod, all the rods being in the same vertical plane when the dash was in position on the vehicle. Is this a correct description of the frame of that dash?

Ans. No, sir; the dash was with an oval rod above the leather-plated; the out ends of the dash were covered with leather to the half circle formed for a handle, and the handles were plated.

Ques. 78. With this exception, is my description in question 77 correct?

Ans. I gave a description of the dash as it was as near as I can.

71 Ques. 79. Were there two upright rods at the end of the dash frame; were these rods parallel, with the exception of the half circle at the upper end and the handle; was there more than one bottom rod in the dash or frame; was the outer one of these two uprights separated from the main leather cover of the dash? What was the shape throughout of the bottom rod or rods of the frame or dash; what was its size and what was the size of the other rods of said dash?

Ans. One upright rod at the end of the dark frame straight, with the exception of a little bend forward. They made most of the dashes in those days a little pitching forward, especially on crooked jobs. The out end rod came on a circle around the bottom corner and ran up to the handle, forming the handle—I can't give you the size of that, for I never measured one in my life, as I know of—the out end rod running from the handle to the upper corner of the main dash; then the rod was a continued, circled rod over the top and plated. It was covered with leather except at the handles. There was but one bottom rod in the dash or frame; it was straight, I think, seven-eighths; I can't tell you exactly; I never measured it; it was oval-shaped. The outside rod was three-eighths; the *in* end and upright and top bar of the dash was, I think, probably five-eighths, oval. I could go to the hardware store and get the exact size.

Ques. 80. Standing directly in front of the phaeton of Shank's, after this dash had been connected thereto, the inner and outer feet having been placed in position and the job completed, what

72 was the shape of the outer feet? Viewed directly at the front of the vehicle, standing directly in front of either outside foot, viewed in such a direction, did such outer foot with its upper extension occupy and lie in one vertical plan?

(Objected to as immaterial and irrelevant.)

Ans. You couldn't see the outside feet at all after the dash was on.

Ques. 81. Then, supposing the dash to be broken away or removed from said outer feet, the latter still standing, and a person was to stand directly in front of either of said outer feet, would such foot with its upper extension occupy and lie in one vertical plane?

(Same objection.)

Ans. The upper part would be perpendicular or nearly so.

Q. 82. Why do you say "or nearly so?"

Ans. In order to make it fit the lower bar of the dash, if the lower rod of the dash should be perpendicular—width ways—the upper end of the outer foot probably would stand in the same position and, running from the connection of the dash on the under side of the sill, would cover the whole front view of the lower foot unless you would stoop a little and look upon the under side of the sill; the outside foot would run down between the body and the body loop.

Ques. 83. You have described the position of the lower part of the foot when viewed as I stated; please describe the position of the upper part viewed as requested.

Ans. I supposed that I had. The upper part stands perpendicular, or nearly so; the dash may lean a little forward or back and the foot is calculated to fit; it is intended to stand perpendicular.

73 Ques. 84. State how and where the lower end of the outer foot was attached and how and where the upper end of this outer foot was attached; also state whether this outer foot was attached to anything at or near its mid-length; and, if yea, state to what it was there attached, in what manner, and by what means?

Ans. The lower end of the outer foot was attached to the sill of the body, with a bolt running through the body loop and through the sill of the body. The upper end of the outer foot was attached to the body sill, with a bolt running through the sill and the upper part of the inner foot of the dash, bolting both feet to the body sill. It was attached by a bolt at or near its mid-length to the body sill, and the dash is bolted to the upper and lower foot with a slot in the dash at each end, as near as I can recollect, a half an inch long, with a slot being made between the outer and inner rods, at the end.

Ques. 85. State how and in what manner and by what means the extension of this lower or outside foot was connected, if it all, to anything, and to what it was connected.

Ans. It was connected by three bolts to the body and by one bolt to the dash, the upper foot to the body with two bolts, both passing through the lower foot.

Ques. 86. State how and in what manner and by what means the extension or brace of this lower or outside foot was connected, and state to what it was connected.

(Objected to as having been answered by witness.)

Ans. Connected to the dash a little above the center by bolt
74 on the lower end and collar and nut, I think, on the upper end.

Ques. 87. To what part of the dash has this brace or extension connected?

Ans. To the lower rod and to a little above the center of the in-end rod of the dash, and to another brace connecting a little below the center of this brace, running to the bolt that connects the body loop to the spring bar.

Ques. 88. What was the space between the outer upright rail and its adjacent upright rail, which latter I believe you call the in-end rail?

Ans. I should think some two inches and a half or three-quarters; it might be three inches.

Ques. 89. As I understand you, the slot in the lower bar, near the end of the dash, was midway between the said outer upright rail and its adjacent in-end rail; is this correct? Also state whether the firm of Wood, Eberhart & Nutt was known as Wood, Eberhart & Co. while you worked for the said firm; also tell us how you fix the date when the phaeton dash for Shank was made and attached to the phaeton. Where does Mr. Shank live now, and what is his full name?

Ans. The slot was near the center, I think, nearest the second rod. It might have been half an inch either way, but I think it was nearer the inner rod or bar. The firm of Wood, Eberhart & Nutt was not known as Wood, Eberhart & Co. while I worked for them, to my knowledge. I fix the date when Mr. Shank's dash was made by the fact that they (Wood, Eberhart & Nutt) had been running about two years when the job was built. Mr. Shank is dead.

75. I think his name was John Shank; at least, he went by that name.

Ques. 90. Give the shape of the upper end of each of the inner or upper dash-feet on the Shank phaeton; also state the number of holes in the upper end of each of said inner feet; also give us the name of Mr. Rentfrow's helper, to whom you referred, and where he lived.

Ans. I think that foot ran straight up from the sill and connected to the dash with one hole; there was only one hole in the upper end of the foot. I cannot give the name of Mr. Rentfrow's helper; he had different helpers; at one time Benny Anderson, who is now in the employ of the Toledo Wagon Company, at Toledo, Ohio; another I remember by the name of Fred. Eberhart, who lives in Penn township, St. Joe county, Indiana; he had a German boy working for him, but I never knew his name nor don't know where he is.

Ques. 91. Do you know whether this John Shank bought another new job of Wood, Eberhart & Nutt, called a drop front, or is this phaeton job one of the same as the so-called "Shank drop front?"

Ans. This phaeton is the same as the so-called drop front; Rentfrow called it a drop front, but the name of the job was a phaeton; he bought another job prior to the one we are speaking —, called a standing-top rockaway; he bought it, I think, the first year that Wood, Eberhart & Nutt started in business; it was a panel-dash vehicle.

Ques. 92. Do you know how many buckboards were sold to Doctor Grimes from Wood, Eberhart & Nutt's factory while you were there?

Ans. One, to my knowledge.

76 Redirect examination by Mr. RECTOR:

Ques. 93. Cross-question 55 and your answer to it would make it appear as though the separable feet which connected the dash to the vehicle made for Doctor Grimes were composed of two pieces joined

together at the angle found by the upper and front part of the foot, standing perpendicular; were these feet each composed of two separate pieces or were they one solid piece, with the front portion bent up?

Ans. One solid piece, the shape of an L at the top.

Ques. 94. Were all the separable feet used for connecting the dashes, referred to in your deposition, to the vehicle made of one solid piece, as that in Doctor Grimes' case?

Ans. Yes, sir.

Ques. 95. In answer to cross-question 90 you say that the upper end of each of the inner feet connecting the dash to the Shank phaeton was straight up and had one hole in its upper portion; please state whether or not these feet were L-shaped as those in Doctor Grimes' vehicle.

Ans. They were not the same; they were straight up; no L at the top.

Ques. 96. Who was the blacksmith who made the dash frames at Wood, Eberhart & Nutt's at the time the dashes were made for Doctor Grimes, Mr. Shank, and the Dunkard?

Ans. William Rentfrow.

Recross-examination by Mr. FISHER:

Ques. 97. In view of your answer to redirect question 93, how do you explain your answer to question 55?

Ans. Because I didn't thoroughly understand what Mr. Fisher meant in getting it in two separate pieces or welding in the
77 angle, because it was not welded in the angle; it was all one solid piece, made of Sweder iron.

Ques. 98. In view of your answer to redirect question 93, how do you explain your answer to cross-question 55 as regards the shape of the foot?

Ans. The shape is just the same as I told you in the first statement. It is one piece of iron. The upright part is, as near as I can recollect, two inches high, forming an L at the top.

Ques. 99. Then, as I understand you, the horizontal part of the foot and the upright part of it formed, as mentioned in my question 55, an angle with each other, thus together forming an L-shaped piece of iron, the upright and horizontal portions being in one and the same piece of metal. Was this the fact?

Ans. One piece of iron; yes, sir.

Ques. 100. Was the shape of the foot as described in my last question the correct shape?

Ans. It would form an L at the top or it would form an L if you would turn it up on the edge.

Ques. 101. Question 100 repeated.

Ans. I guess it was.

Ques. 102. Did William Rentfrow make the dash for Doctor Grimes' buckboard, and the new dash for the Dunkard repair job, and the dash for the Shank phaeton?

Ans. I think he did.

Ques. 103. William Rentfrow testified that he made two buck-

boards at Wood, Eberhart & Nutt's, and that, as you were going away, you trimmed the dashes before the remaining portions of the buckboards were done. Is the Doctor Grimes buckboard with
78 the dash you have testified about one of these buckboards Rentfrow ironed?

Ans. There were more than two made there. I couldn't say as to how many he ironed, because they had other blacksmiths there. This dash of Doctor Grimes was covered before the job was finished. The buckboard was in the paint shop, but the dash was covered before the buckboard was finished.

Ques. 104. Did you trim the dash for Doctor Grimes' buckboard?

Ans. I did, sir.

Ques. 105. Who punched the slots in the dash attached to Mr. Shank's phaeton, and who made the punch by which these slots were punched?

Ans. I didn't see the holes punched and didn't see the punch made, but suppose Mr. Rentfrow did it. He ironed the balance of the jobs.

ALBERT C. POST.

Notary fee	$32 00
Witness " (Rentfrow)	3 00
" " (Post)	1 50
Mileage (Post)	1 80
	$38 30

Paid by defendants.

79 United States Circuit Court for the District of Indiana. In Equity.

GEORGE M. PETERS
vs.
JULIUS A. HANSON and COURTLAND C. VAN CAMP. } 7367.

I, Harry A. Ritter, a notary public in and for the county of Elkhart and State of Indiana, do hereby certify that the above William Rentfrow and Albert C. Post were by me first duly sworn according to the law to testify the truth, the whole truth, and nothing but the truth relating to said cause; that I was attended by counsel for complainant and defendants; that the depositions of said witnesses were then and there reduced to writing by me in their presence and duly subscribed by them in my presence; that I am not of counsel nor attorney for either party in this suit nor interested in the result thereof; that said depositions were taken at the time and place mentioned in the notice hereto attached.

I further certify that my fees for taking said depositions are $32, and that the same has been paid by the defendants, and also the witnesses' fees and their mileage, in the sum of $6.30.

Witness my hand and seal this 31st day of January, 1884.

[SEAL.] HARRY A. RITTER,
Notary Public for Elkhart County, Indiana.

80 UNITED STATES OF AMERICA, } ss:
District of Indiana, }

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true, and complete copy of the depositions of the defendants in the cause of George M. Peters *vs.* Julius A. Hanson *et al.*, No. 7367, filed in said court, as fully as the same remain upon the files in my office; and I further certify that said depositions were omitted from the transcript of the record filed in the Supreme Court of the United States on appeal from the decree in this court through inadvertence or mistake.

Witness my hand and the seal of said circuit court, at Indianapolis, in said district, this 7th day of March, A. D. 1888.

[Seal Circuit Court of the United States, District of Indiana.]

NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: Supreme Court U. S. 1887, October term. No. 329. George M. Peters, app't, *vs.* Julius A. Hanson *et al.* Stipulation of counsel and addition to record. [Stamped:] Office Supreme Court U. S. Filed Mar. 26, 1888. James H. McKenney, clerk.

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[Seal Circuit Court of the United States, District of Indiana.]

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PETERS
v.
HANSON.
No. 66.

SUMMARY.

1

The claims sued upon, and covering the invention disclosed by Peters' Patent No. 213,529 are in effect for:

A new article of manufacture, a complete dash for vehicles, independent of its foot, said dash provided with bearings affording a variable connection with its independent foot, capacitating the dash to be attached to different width of vehicle bodies.

2

The claims sued upon, and covering the invention disclosed by Peters' Reissue No. 9,891, are in effect for:

A new article of manufacture, a complete dash having a wide bottom rail lightened by channels leaving a central web, said web having an opening affording attachment, by means of an independent foot, to different width vehicle bodies and providing a rigid attachment for said foot.

Among the many advantages incident to this new article are:

a. The dash is complete ready for attachment to vehicle bodies of different widths.

b. The complete dash lacking the old projecting feet integral therewith, can be packed and shipped in quantities with greater vacility.

c. No skilled labor is required to attach the dash.

d. The dash is strongest at the point of attachment to feet, where the greatest strain occurs.

e. It is cheaper including the separable foot—"it saved half the work."

f. The breakage of a foot does not destroy the dash.

That the public appreciated the many advantages of the improved dash, is evidenced by the fact that from the date of the patent to the bringing of this suit in round numbers 500,000 dashes had been made and used.

Supreme Court, U. S.
FILED,
JAN 16 1889
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 66

GEORGE M. PETERS, APPELLANT,

vs.

JULIUS A. HANSON ET AL., APPELLEES.

Appeal from the Circuit Court for the District of Indiana.

BRIEF FOR APPELLANT.

BENJAMIN BUTTERWORTH,
Of Counsel for Appellant.

JUDD & DETWEILER, PRINTERS.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

GEORGE M. PETERS, APPELLANT,

vs.

JULIUS A. HANSON ET AL., APPELLEES.

Appeal from the Circuit Court for the District of Indiana.

BRIEF FOR APPELLANT.

George M. Peters, appellant in this case, is the inventor of certain improvements in wagon dashes, which enable the said dashes to be made separately from and independently of the wagon body, and to be sold as independent articles of commerce.

In order that dashes may so be manufactured as a separate article of commerce and independent of any particular wagon body there must be some provision by which they may be attached to any wagon body to which the purchaser may desire to apply them. It was to the solution of this problem that Mr. Peters directed his inventive faculties. He solved it by making the dash feet separable from the dash and laterally adjustable upon it. Now the wagon-builder can buy dashes ready made in quantity and fit them easily

to any wagon body which his customer may order him to construct.

A further and important advantage resulting from the use of Mr. Peters' invention is that by means of these same detachable and adjustable feet the dash may be attached to the wagon body readily and without injury to either. Before this invention came into use the dash frame was made with feet welded solidly to it. When such a dash was applied to the wagon body the feet rarely fitted; consequently they had to be reheated and bent, thus injuring the polished leather of the dash, as well as the wagon body itself, and consuming much time.

The Peters improvement in dashes was immediately adopted by the public, and half a million dashes were manufactured under the patents in a few years. The appellees, Hanson and Van Camp, have made and sold dashes which infringe the claims of patents granted to George M. Peters and covering his inventions. Suit was brought against them in the Indiana circuit. Infringement was admitted upon many points, but the bill was dismissed by the circuit court on the ground that the alleged invention was not patentable, and therefore this appeal is brought to this Court.

The patents in suit are two in number.

No. 213,529, granted March 25, 1879, to George M. Peters, of Columbus, Ohio, upon an application filed in the United States Patent Office June 19, 1875, which patent covers the broad invention of a dash with laterally adjustable feet.

Reissue No. 9891, granted October 11, 1881 (original number 224,792, dated February 24, 1880), to George M. Peters, of Columbus, Ohio, upon an application for such reissue filed in the United States Patent Office June 15, 1881; application for original patent filed May 5, 1879. That part of this reissued patent which is here in suit covers certain improvements in the structure of the dash frame which enable the invention of laterally adjustable feet to be used successfully and to advantage. The invention here dis-

closed is therefore supplementary to the broad invention of laterally adjustable feet in combination with the dash described and illustrated in the above-mentioned patent No. 213,529.

All the patents above referred to are duly set out in evidence and in the record in this case.

The specification and drawings of patent No. 213,529 show a dash of certain construction, having laterally adjustable and detachable feet by which it may be attached to a wagon body of any width. The said lateral adjustment is attained by securing the feet to the dash by bolts passing through slots in the lower portion of the dash. This patent has in all eight claims. The first four claims, the infringement of which cannot upon an examination of the [illegible]

Specification of Errors.

The point in the decision of the court below on which this appeal is taken is that—

The court below erred in holding that there was no patentable invention in the devices described and claimed in the patents here in suit.

The specification and drawings of reissued patent No. 9891 show a dash having similar laterally adjustable and detachable feet, the said feet and that portion of the frame of the dash to which said feet are attached being channeled on either or both sides. This reissued patent has in all thirteen claims, the last eleven of which are literal reproductions of the eleven claims of the original patent, No. 224,792, of which the patent in suit is a reissue.

Claims 1, 2, 3, and 11 of this reissue patent, which are

to any wagon body which his customer may order him to construct.

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(1.) The combination of a dash and laterally adjustable attachments, whereby the same may be connected to vehicles of different widths, substantially as set forth.

(2.) A dash or dash frame having slots or openings, whereby attachments may be made at different points, substantially as and for the purposes set forth.

(3.) A dash provided with bearings having slots or openings, substantially as and for the purpose specified.

(4.) A dash frame provided with bearings arranged to strengthen the frame in those parts whereby the dash is to be connected to the laterally adjustable feet or to the vehicle.

The specification and drawings of reissued patent No. 9891 show a dash having similar laterally adjustable and detachable feet, the said feet and that portion of the frame of the dash to which said feet are attached being channeled on either or both sides. This reissued patent has in all thirteen claims, the last eleven of which are literal reproductions of the eleven claims of the original patent, No. 224,792, of which the patent in suit is a reissue.

Claims 1, 2, 3, and 11 of this reissue patent, which are

clearly infringed by the defendant's dashes in evidence, are as follows:

(1.) A vehicle dash whose lower bar is provided exteriorly with a channel or recess, the metal on either side of the channel or recess affording a bearing for the dash foot or other portion of the vehicle to which the dash is connected, for the purposes specified.

(2.) A dash whose lower rail is composed near or at the ends of two thick portions united by an easily perforated web, for the purposes specified.

(3.) A dash provided with a rail having vertically flat sides, one or both of said sides being exteriorly channeled, substantially as and for the purposes specified.

(11.) The foot channeled on either or both sides, substantially as and for the purposes specified.

The defenses raised in this case are prior use, lack of patentability, invalidity of reissue. The last is, of course, urged only against reissue patent No. 9891. The first two are urged against both patent No. 213,529 and the reissued patent.

This Court long since determined the character of proof required to establish the defense of prior use.

"The invention or discovery relied upon as a defense must have been complete and capable of producing the result sought to be accomplished, and this must be shown by the defendant. The burden of proof rests upon him *and every reasonable doubt should be resolved against him.* If the thing were embryotic or inchoate; if it rested in speculation or experiment; if the process pursued for its development had failed to reach the point of consummation, it cannot avail to defeat a patent founded upon a discovery or invention which was completed, while in the other case there was only progress, however near that progress may have approximated to the end in view. *The law requires not conjecture, but certainty.* If the question relates to a machine the conception must have been clothed in substantial forms which demonstrate at once its practical efficacy and usefulness." (Coffin *vs.* Ogden, 18 Wall., 120.)

"Letters patent of long standing will not be declared invalid upon testimony largely impeached." (Agawam Co. *vs.* Jordan, 1 Whitman, 187.)

These decisions have been affirmed and again applied by this Court in the recent case of Cantrel *vs.* Wallick, 35 O. G. 871, where the facts were like those of the case at bar. The Court says:

"The prior use and consequent want of novelty alleged by the defendant was the making in 1866 and the using from that date till 1871 by Frederick W. Werner of a box for enameling moldings, in which the invention described in the patent of the plaintiff was embodied. Werner testified to this making and use, and to the further fact that in 1874 he sold the box to Ladd, who some time afterward began using it. The burden of proof is upon the defendant to establish this defense, for the grant of the letters patent is *prima facie* evidence that the patentee is the first inventor of the device described in the letters patent and of its novelty. (Smith *vs.* Goodyear Dental Vulcanite Co., 93 U. S., 486; Lehnbeuter *vs.* Holthaus, 105 U. S., 94.) Not only is the burden of proof to make good this defense upon the party setting it up, but it has been held that every reasonable doubt should be resolved against him. (Coffin *vs.* Ogden, 18 Wall., 120; Washburn *vs.* Gould, 2 Story, 122, 142.) The proof of prior use in this case depends on the testimony of Werner and T. C. Ladd. The contrivance to which the testimony of these witnesses refers is not produced nor any model of it. It is merely represented in a drawing made by Werner six years after he had sold the box to Ladd. These two witnesses are contradicted by four others, who were engaged in the factory where the box was used and who had frequently seen the box referred to when in use and the moldings enameled by its use. The defendant has therefore failed to show by preponderance of proof, much less beyond reasonable doubt, the prior use on which he relies."

The case of prior use alleged in the case at bar (testimony of Rentfrow and Post, pages 15 to 45, Addition to Record) rests similarly on the testimony of two witnesses similarly contradicted, not only "by four others," but by eight others,

who had every opportunity of knowing about the alleged facts testified to by the witness Rentfrow. "The defendant has, therefore, failed to show by preponderance of proof, much less beyond reasonable doubt, the prior use on which he relies."

The defendants and appellants also allege in their answer to the bill that the inventions covered in these patents are described in certain prior patents and publications, but these were not urged at the hearing, and they may be dismissed, in the language of this Court in the case of the Consolidated Safety Valve Co. *vs.* The Crosby Steam Gauge and Valve Co., 30 O. G., 991, as follows:

"In regard to all of the above patents adduced against Richardson's patent of 1866, it may be generally said that they never were in their day, and before the date of that patent or of Richardson's invention, known or recognized as producing any such result as his apparatus or that patent produces, as above defined. Likenesses in them in physical structure to the apparatus of Richardson in important particulars may be pointed out, but it is only as the anatomy of a corpse resembles that of a living being. The prior structures never effected the kind of result attained by Richardson's apparatus, because they lacked the thing which gave success."

The evidence offered in this case to establish the fact of prior use consists mainly of the testimony of the witnesses Rentfrow and Post (found on pages 15 to 45, Addition to Record), which is directed to the broad issue of a dash with adjustable feet. The testimony of these witnesses is involved in such contradictions and inaccuracies that, standing alone, under the rulings of this Court, as cited above, it would not be sufficient to defeat plaintiff's claim. Attention is called to a few points illustrative of the character of the evidence referred to.

RENTFROW'S TESTIMONY.

The Court will note that the questions are leading and suggestive.

He testifies to certain *alleged* constructions by him in which

a number of holes were bored in the bottom rail of a dash and the upper ends of the separable feet were turned to right and left in the shape of an F. It is evident that the arrangement which he is trying to describe was simply the use of these feet at one or the other end of dash, so that the top portion of the F would point in or out and thus give the feet two different adjustments. A cursory examination will disclose that this is not the construction involved in the invention at issue. (See answer to QQ. 15 and 116, pages 17 and 26.)

QQ. 153 and 154, page 30 and following, show the witness to be ignorant of the meaning of terms employed throughout his examination, and, consequently, of the meaning of the questions which he was answering.

Q. 18, page 17, refers simply to a method of splicing and does not involve the invention at issue.

Compare Q. 5, page 16, and Q. 19, page 18, for variation in dates.

Q. 21, page 18. Rentfrow testifies that he lived at Mishawaka in '67 and '68, and the witness Post, in his effort to make his testimony agree with Rentfrow's, states the same date as the time when he worked at the same place with Rentfrow. The testimony of Wood, Eberhart, Nutt, and Bagley, the employers of Rentfrow, corroborated by Kimberley and Pitner, fellow-workmen of Rentfrow, proves conclusively that it was in '56, '57, or '58 that he was working in the places he describes. These two witnesses are ten years out of the way in the dates. The precise agreement in their mistakes is suggestive.

Rentfrow's direct testimony (QQ. 7, 12, 25, 27, pages 16 to 18), to the effect that he made new dashes with separable feet, is flatly contradicted by his answer to Q. 37, page 19.

QQ. 40 to 45, page 20, presents evidence of his want of definiteness and self-contradiction.

Q. 46, he makes another mistake, this time of twenty years, in the date, placing a period of his life at a date five years before the taking of the depositions, when, as before shown, the overwhelming testimony of other witnesses proves it to have been twenty-five years before the taking of such deposition.

QQ. 53 and 58. Rentfrow is unable to state for whom he was working at the time about which he is testifying, with minute particularity as to the kind of work done.

QQ. 83 to 87, page 23, covers simply feet bolted to the dash with two or more bolts, and not feet with lateral adjustments.

Q. 102, page 24. Rentfrow makes again a mistake of twenty years in dates.

Q. 25 to 27, page 18. Rentfrow states that the dashes made were for Dr. Grimes and a Mr. Shank.

Q. 122, page 26. Testifying as to the same dashes, he says he thinks one was made for Dr. Grimes, but does not know for whom the other was made.

Q. 80, page 23. Says the dashes were for a couple of buck-boards.

Q. 125, page 26. He says the vehicle which Mr. Shanks got was a drop-front buggy.

These points are cited to show that the witness was trying to give color of probability to his statements by giving names, &c., and in one case saying the man mentioned was dead. All the facts were shown to be not in accord with the statements of the witness.

POST'S TESTIMONY.

Q. 2, page 31. Post follows Rentfrow, and, in his anxiety to have the testimony hang together, makes a mistake of ten years in dates.

Q. 3. He follows him also in mistaking the name of the firm for which he worked.

Q. 12, page 32. He has no recollection of adjustable feet on the buck-board dashes which Rentfrow positively testifies were, in a measure, adjustable.

Q. 17, page 32. The construction here described was merely the bolting of the feet through the dash, and does not necessarily involve adjustability.

Q. 29 Q to 32, page 33. He describes the Shank vehicle as a phaeton; Rentfrow having at different times described it as a buck-board and a buggy. Post testifies to a slot in the shank dash, about which Rentfrow has said nothing. On the contrary, Rentfrow (Q. 134, page 27) states positively that said dash had holes, and not the slot.

Shank says (Q. 29) that this dash had four feet. Rentfrow mentions only two.

Q. 35, page 34, in his testimony Post evinces something of eagerness to make out a case, and is led into the statement

that many similar dashes were made for the trade. The improbability of this is apparent from the testimony of the three employers of witness that nothing of the kind was ever made in their shop, and that they would have known it if such work had been turned out. The employers are corroborated by the evidence of the workmen, Kimberley and Pitner, to the effect that any such change would have been regarded as a great improvement and would have been adopted; and, further, that when the improvement in controversy did become known over five hundred thousand dashes were manufactured in a few years. This answer is important as showing the animus of this deponent and indicating the general trustworthiness of his testimony.

QQ. 43 to 47, page 35. Post fortifies his recollection as to the time during which he worked at Mishawaka by an enumeration of a number of circumstances interwoven therewith, yet he was ten years out of the way, as before shown and afterwards acknowledged by him. (Page 65, Transcript of Record.)

Q. 105, page 24, Addition to Record. Rentfrow recollects the names of Ashton and Steele as among his fellow-workmen at the time in regard to which he was testifying, but cannot recall those of Kimberley and Pitner. Ashton and Steele were not produced. Kimberley and Pitner were produced and testified that they knew nothing of the work which Rentfrow claims to have done, though they worked by his side at the time, and that if they had known of it they would have remembered it on account of its novelty; that they had every opportunity of seeing everything what Rentfrow did while in the shop, and would certainly have known it if anything of the kind had been done by him. The testimony of Kimberley and Pitner is clear cut, positive, and unshaken on cross-examination.

Rentfrow's three employers, Eberhart, Nutt, and Bagley (pages 59, 68, and 70, Transcript of Record), testified that they knew everything that was going on in their shops, and that Rentfrow never did anything of the kind he describes. Dr. Grimes and Mr. Shank also testify that they never bought any vehicle of the kind that Rentfrow says was sold to them, and that they never saw a dash with adjustable feet. All

this testimony is clear and positive, each witness corroborating the others, and unshaken on cross-examination.

Thus it will be seen that the testimony of Rentfrow and Post is contradicted, 1st, by the improbability that they would turn out work not ordered nor authorized; 2d, by the employers for whom the work was done that no such dashes as are in issue were ever turned out; and 3d, by the men who purchased the vehicles as well as by the evidence of the fellow-workmen of Rentfrow and Post.

Defendant's witness, Wood, also gives some uncorroborated, confused, and uncertain testimony (page 7, Addition to Record) as to having seen some dashes having some of the features of novelty covered in these patents previous to Mr. Peter's invention of the same, but the only part of his testimony entitled to any weight—that referring to the dashes seen at the works of Loomis & Avery, Chicago—is squarely contradicted by the complainant's witnesses, Binder and Ballom (pages 86, 87, and 88, Transcript of Record), respectively foremen of the blacksmithing and carriage-trimming departments of those works.

Moreover, the dates at which he thinks he may have seen slotted dashes are subsequent to June 19th, 1875, when the application for patent No. 213,529 was filed.

NATURE OF THE INVENTIONS HERE AT ISSUE.

To clearly grasp the questions involved in this case and to correctly apply the familiar principles of patent law to them, it is necessary to sharply define the inventions here at issue. As against patent No. 213,529, which covers broadly a dash with laterally adjustable and detachable feet, it is urged by the defense that "slots are old," and therefore the patent is invalid. Granted; but this appellant does not claim to have *invented the slot*, any more than he claims to have *invented the dash*.

"A patentable invention is a mental result. * * * The machine, process, or product is but its material reflex and embodiment." (Smith *vs.* Nichol, 21 Wall., 112.)

The idea, the "mental result" or conception which here forms the basis of invention is that of *the combination* with the dash of feet or connections—"attachments," as they are called in claim 1—which shall be *laterally adjustable* upon the said dash. The attempt to befog the point involved in this case by saying "slots are old" is idle. The slot is not the invention, but merely a part of "its material reflex and embodiment." The question that here confronted the inventor was—

"How can I overcome the many difficulties that arise in the fitting of a dash with solid feet to the wagon body?"

The dash with solid feet was an awkward construction to begin with. Then, the feet rarely fitted the body, and heating and bending, boring and gouging, had to be done. All this injured the polished leather of the dash and took much time. Even if the solid feet fitted the first time the frequent measurements and nice work necessary to bring about that consummation rendered the job costly, and required that each wagon should have a particular dash specially made for it, thus rendering impossible the wholesale manufacture of a large number of duplicate parts at once—the principle which lies at the basis of economy in manufacturing.

As the inventor pondered over these difficulties, which had been a source of annoyance since dashes were first used, and against some of which he had unsuccessfully struggled with his prior invention, shown in patent No. 102,315, granted April 26, 1870, and illustrating a *detachable* but not *adjustable* dash-foot, he finally conceived the idea embodied in the design which is covered by the patent, namely: "Make the feet detachable and laterally adjustable."

At that moment the difficulty was solved. Simultaneously with the birth of the idea a dozen possible embodiments of it—the slot and bolt, the sliding friction clamp, the screw method of adjustment, etc.—probably came trooping into the mind of the inventor, as they would have come before

the mental vision of any other person familiar with mechanical constructions. All these are of the common stock in trade of the engineering world and not individually patentable; but the law says also that abstract ideas, functions, and results cannot be patented; that the patentee must particularly point out and illustrate the particular and preferred concrete form of mechanism in which his invention is to be embodied, and this the applicant did, showing the old adjustment by a bolt and slot, only to be met by infringers with the assertion that "slots are old." The various mechanical expedients—the dash, foot, slot, bolt, and nut—*were* old and before the mind of every one skilled in the art. *The combination of them*, however, if embodying a new and useful result, is patentable, and the fact that the mechanical constituents are old and familiar in no way detracts from such patentability, though, after the invention is made and comes into general use, the said mechanical expedients are so simple that when the attention of the superficial observer is directed to them he exclaims—

"Anybody could have done that."

The truth which it is here attempted to express is set forth with clearness and force by this Court in the decision in Wooster *vs.* Blake, 22 O. G., 732:

"Much is said in the evidence on the part of the defendants as to the obvious character of this or that arrangement, and that any mechanic would know enough to do this or that. This is the often-repeated story in belittling invention. The invention consists primarily in finding out what mechanical operation is necessary to produce a practical result arrived at. When such operation is hit upon the mechanical work is easy. It is easy when the mechanical operation is seen to say that it was obvious that certain mechanical arrangements would effect it; but mechanical arrangements are tried and tried in vain to reach a practical result, because the mechanical operation which is to effect such result is not yet seen. In looking at the completed thing the mechanical operation is there, but the inventor,

though he knew all about cams and levers and other mechanical arrangements, did not have in advance before him the coveted mechanical operation."

Nor does the fact that dashes are old, slots are old, and detachable feet are old, *separately*, detract from the patentability of the appellant's new and useful *combination* of these old elements.

"Where the thing patented is an entirety, consisting of a separate device or of a single combination of old elements incapable of division or separate use, the respondents cannot make good the defense in question by proving that a part of the entire invention is found in one prior patent, printed publication, or machine and another part in another, and so on indefinitely, and from the whole or any given number expect the Court to determine the issue of novelty adversely to the complainant." *Imhaeuser* vs. *Buerk*, not reported; (Parks *vs.* Booth, 102 U. S., 96.)

That the invention covered in this first claim was new is established by the testimony of many witnesses and of the expert witness Elliot, who testifies, page 38 of the printed Transcript of Record, lines 3 to 9, "The state of the art reveals the fact that dashes for vehicles were made with *separable feet* prior to the date of this invention, but I am not aware that any dashes were provided with any members or portions of their frame so constructed as that there could be a *lateral adjustment*, or any adjustment by which the feet could be adapted for narrower or wider bodies of vehicles prior to the date of this patent."

The patentee's invention rendered the production of a slotted dash possible as a separate article of manufacture. Such a slotted dash is shown to be new, and therefore claims 2, 3, and 4 of this patent, which are not combination claims, are equally valid as being for such a new article of manufacture. A perfectly analogous case is that of McComb *vs.* Brodie, 5 Fisher, 384, where Mr. Justice Woods held a cotton tie with a slot in it to be a patentable invention. The

tie was old; the slot was old. The substitution of the sl for a hole simply facilitated the application of the tie. Sim larly, a dash with slots in it is certainly patentable if ne and if the slots facilitate the attachment of the dash to th wagon, even though "slots are old."

The appellees' counsel assert that the separable dash fe and dash were the natural outgrowth of the advance in th art of carriage-making and its division into specialtie This is inverting the true state of affairs, for it is respectfull submitted that the testimony in this case tends rather t show that a great advance in the art *dated and resulted fro* the invention of a dash that could be applied to any wagon thus rendering the manufacture of dashes as a specialty pos sible; that the growth of the art is the result of the inven tion, rather than the invention being simply the result o the growth of the art.

INVENTION DISCLOSED IN REISSUE PATENT.

The principle involved in determining the patentabilit of the invention covered in claims 1, 2, and 3 of reissue patent No. 9891 is a little different from that upon whic the previous discussion has hinged. The principle is tha clearly enunciated in the leading case of Hailes *vs.* Van Wormer, 20 Wallace, 353:

"Invention generally consists in new modes of applying what was before known so as to produce thereby effects either not produced before or not produced in that manner or not produced so usefully."

It is urged by the appellees and established by the testi- mony of their witnesses, Wood and Brackett, that "channel irons are old." No one would ever deny that well-known fact. The appellant lays no claim to the invention of chan- nel irons; he claims simply a dash in which there is a "new mode of applying" this "before-known" channel iron—a dash in which the channel irons are so incorporated as to

attain a certain specific object, that object being so attained by the development from the channel irons of effects probably "not produced before," certainly "not produced in that manner," or at least "not produced so usefully."

The object which the patentee had in view was to produce a dash having that portion of its lower rail to which the feet are attached and from which the uprights of the dash spring so shaped that it will present the greatest possible resistance to the twisting or torsional strain brought upon it when the top of the dash is pressed outwardly or inwardly, and at the same time enable the feet to get *such bearings upon it as shall present the greatest possible resistance to that same twisting tendency*, while the minor but important features of being light and easily perforated at the point of and for the purpose of such attachment will not be lacking.

It occurred to the inventive mind of this patentee that the old channel iron had certain latent qualities which particularly fitted it for resisting these strains and affording a good bearing surface for the attachment of the feet. Thus the specification of the reissued patent says (see last line of page 26 and first line of page 27 of printed Transcript of Record): "The lower rail is made broad and flat, so that the slot *a* or holes *a'* can be made therein and *leave a strong bearing for the attachment of the feet.*"

Again (see line 27, page 27), "the wide, vertical, flat faces of the lower rail afford *a desirable bearing for the dash foot* or vehicle body (as the rail can be readily perforated for bolts or rivets and the thick edges left above and below the perforations *are first-rate bearings for said foot* or body) and possess great advantages over the customary convex or oval rails, the central portion of which, being thick, renders them hard to punch, *and the edges afford no flat surface for said foot or body to press against.*"

Also (line 40, page 27), "the thick parts, however shaped, connecting said web *serving as supports or bearings for the attachment of the foot.*"

This point is also brought out in the testimony of the expert witness Elliott (Q. 6, page 41, lines 23 to 32, printed Transcript of Record): "Now, as I have already said, in speaking of the defendant's dashes, Complainant's Exhibits A, B, and C, I find they are formed or provided with just such 'channel bars' or bars that are recessed so as to form thick portions on the upper and lower edges, and with their webs between such thick portions, either by making the lower rail very strong in the direction of its width and much lighter than would be the case if the bottom rail were made of a flat bar of the same width, and which thereby furnishes a '*broad bearing surface*,' as I have already explained in speaking of the previous patent, for the *feet to rest against*."

In all of the uses of channel iron mentioned by the appellees' witnesses, such as balustrade rails, girders, railroad rails, frames for safes, fences, carriage running gear, stoves, sewing machines, &c., and in all those known to counsel the strain brought upon the iron is a bending strain, or, as the engineers term it, a simple deflecting strain. Wherever, in these and other uses, channel irons are spliced together the strain upon the splice is also a deflecting strain. In no case is there an internal twisting strain, like that brought upon the patentee's channeled dash rail. In no case of splicing, in the ordinary way, does the clamp *seize the thick portions* of the iron; on the contrary, it *grasps the thin parts or web*, as in the familiar example of fishing-rail joints in a railway track.

These two actions are entirely different. The characteristics of the channel iron brought into play in the two cases are entirely different. The transition required the exercise of the inventive faculty. It was not a logical sequence. The material of the channeled dash rail is so disposed as to resist the internal torsional strain to the best possible advantage. The shape of the rail is such as to enable the feet clamped to it *to obtain solid bearings at the points farthest from its center*, thus affording the greatest possible leverage in resisting the external torsional strain

that tends to tear and twist the rail away from the foot. It is therefore most respectfully submitted that, though channel iron "was before known," this patentee has developed a "new mode of applying" it, "so as to produce thereby effects" "not produced before," "not produced in that manner," and "not produced so usefully."

The inventor is therefore entitled to a patent on what? Not on the channel iron used in such a manner as to bring out these qualities, for channel iron is the same and has the same latent and inherent characteristics, whether it is used in the frame of a dash or in the frame of a steamship; but he is entitled to a patent upon the new article of manufacture—"a dash provided with a rail having vertically flat sides, one or both of said sides being exteriorly channeled, substantially as and for the purpose specified" (claim 3, reissue No. 9891 here in suit)—upon the "new manufacture" which his inventive genius has produced by so incorporating in it things separately old as to bring out new qualities and produce new results.

A case perfectly analogous to the one at bar is found in Guidet *vs.* The City of Brooklyn, 105 U. S., 550, in which this Court held that a pavement formed with blocks having their edges chamfered in order to afford a foothold to draft animals was patentable. Said the honorable Chief Justice in delivering that opinion:

"Guidet chamfered the edges of the broad sides, and thus got the advantage of placing the blocks close against each other and keeping the pavement firm, while he secured on the surface the necessary open joint to furnish a good foothold. That, as it seems to us, was all there was of his invention, and we are by no means inclined to hold that it was not patentable to him. He took the block of stone in ordinary use and, by substituting the chamfered edge on the broad side for the narrow strip of wood or stone, got the space that was needed for the joint, and solidified the pavement by bringing the stones that furnished the surface which was to be used for travel firmly together."

Blocks of stone with chamfered edges are as old as the Egyptian temples—an hundred times older than channel irons—and yet this Court said unequivocally that their incorporation in a pavement in a manner that brought out usefully certain latent qualities rendered the resulting structure a patentable one. Does not, therefore, the new use of channel irons in dashes in such manner as to bring out new features and hidden qualities, as above explained, also render the resulting article of manufacture patentable?

This matter of patentability arising from a new and different function, developed by the novel use of an old mechanical device in a novel situation, was touched upon by this Court in the case of Bates *vs.* Coe, 98 U. S., 31:

"Devices in one machine may be called by the same name as those contained in another and yet they may be quite unlike in the sense of the patent law—in a case where those in one of the machines perform different functions from those in the other. In determining about similarities and differences the courts of justice are not governed merely by the names of things, but they look at machines and their devices in the light of what they do, or what office or function they perform and how they perform it, and find that a thing is substantially the same as another if it performs substantially the same function or office in substantially the same way to obtain substantially the same result, *and that devices are substantially different when they perform different duties in a substantially different way* or produce a substantially different result. (Cahoon *vs.* Ring, 1 Clifford, 620.)"

Independent of other considerations, the prompt adoption by infringers of this form of dash, with channeled rail, would seem to prove that it is more efficacious than the old form of dash, and "to render the article new, in the sense of the patent law, it must be more or less efficacious or possess new properties by a combination of other ingredients." (Glue Co. *vs.* Upton, 97 U. S., 3.)

PRECEDENTS CITED BY APPELLEES.

The precedents cited in the appellees' brief upon this point have no bearing whatever upon this case. The strong and deserved words of condemnation uttered by Mr. Justice Bradley in The Atlantic Works *vs.* Brady were called forth by a state of facts in that case which showed several complete anticipations of the patent in suit by practical working devices, and also a clear case of stolen invention. In the very same decision this Court said: "The design of the patent laws is to reward those who make some substantial discovery or invention which adds to our knowledge and makes a step in advance in the useful arts. Such inventions are worthy of all favor;" and if the testimony of the five intelligent, practical carriage-makers who were called to the stand in this case and the testimony of the trade, which had purchased half a million of Peter's dashes up to 1882, is to be given any weight whatever, this invention now before you is one which has made a "step in advance in the useful arts."

In Pearce *vs.* Mulford the patent was invalidated by the existence of hundreds of completely and absolutely identical anticipatory devices.

In Vinton *vs.* Hamilton a patent for a certain form of cupola furnace for melting pig iron and slag was held invalid because it was a case of completely analogous double use. The same construction was employed for the same purpose in every iron-ore smelting furnace in the world. If this appellant were claiming a *buggy* dash having a slot in it, while abundant testimony and the history of the art show that *wagon* dashes with identical slots were known to every manufacturer in the country, this case would come under the rule in Vinton *vs.* Hamilton, and would never have been brought before your honors on appeal.

The same remarks apply to the case of Brown *vs.* Piper, cited in appellees' brief. That involved simply the application to the preservation of fish of a process widely applied

in the preservation of corpses. The process was applied to the new use absolutely without change or the development of a single idea new and original, in the sense of the patent law or in any other sense. There is not a trace of similarity between that case and the one at bar.

In Roberts *vs.* Ryer, cited in appellees' brief, this Court reiterated the familiar rule that it is "no new invention to use an old machine for a new purpose;" but we do not understand that the Court said that if one incorporated an old element, machine, or article (such as the slot or the channel iron) in a new structure or combination, which structure or combination is "for a new purpose," and into which new structure or combination the old element is introduced "for a new purpose," and the result is so great and acknowledged an improvement in the art that it is universally adopted and the patent therefor persistently infringed, that "there is no new invention."

The case of Mosler Safe Co. *vs.* Mosler, cited, seems to have no bearing whatever on the one at bar. That of Tucker *vs.* Spaulding, also cited, turned upon a case of complete anticipation. The patent was for a saw. The anticipatory device was a saw of identical construction, the only difference being that it was primarily intended for sawing but a little way into a beam to form a mortise. Patentee claimed the *machine* and the machine was *old.* It was the same machine as the anticipatory device, only slightly enlarged.

No such questions as those decided by this Court in the cases cited are here involved. This appellant is not claiming an old thing or the "new use" of an old thing. He does not claim the invention of channel iron or of any "new use" of channel iron. He does not claim the invention of slots or of any "new use" of slots. He claims a *new article of manufacture,* a dash having its lower rail channeled and slotted for the purpose described, and the claim is believed to be valid, as are also the others here in suit.

AS TO THE ALLEGED INVALIDITY OF THE REISSUE.

The appellees and defendants alleged in their answer to the bill of complaint that reissued patent No. 9891 was invalid as being an unwarrantable expansion of the original patent. The reissued patent is a word-for-word reproduction of the original patent, with the addition of the claims 1 and 2 and of the seven-line paragraph of the descriptive portion of the specification (printed from lines 37 to 43 of the transcript of record in this case). Said reissue is believed to be valid because—

1st. It is for the same invention. This is apparent on its face, and "if the reissue covers only the same invention it is valid." (Morey *vs.* Lockwood, 8 Wallace, 230.)

2d. The added claims, 1 and 2, are narrower in scope than the original claims. (See testimony of Boyd Elliot, Q. 6, page 42, printed Transcript of Record.)

3d. The reissue was applied for within fifteen months after the grant of the original patent. "In all the like cases in which the Supreme Court has ruled against the validity of the reissue (so far as I know) the lapse of time has been greatly in excess of two years." (Judge Acheson in Stutz *vs.* Armstrong, 28 O. G., 367.)

4th. Independent of the validity of the reissued patent as a whole the 3d and 11th claims, which are admittedly infringed, are reproductions of claims 1 and 9 of the original patent, and therefore undoubtedly valid, so far as the question of reissue is concerned. (Gage *vs.* Herring, 23 O. G., 2119; Coon *vs.* Wilson, 30 O. G., 889; Yale Lock Manufacturing Co

vs. Sargent, 35 O. G., 497; Reed *vs.* Chase, 33 O. G., 996; Eclipse Windmill Co. *vs.* Woodmansee Co., 32 O. G., 1603.)

UTILITY INDICATIVE OF PATENTABILITY.

Finally, if there still remains any doubt as to the patentability of these improvements in dashes it should disappear before the verdict of the world as expressed by the enormous demand for them in the carriage market.

"Undoubtedly the results or consequences of a process or manufacture may, in some cases, be regarded as of importance when the inquiry is whether the process or manufacture exhibits invention, thought, or ingenuity. Webster, on the subject-matter of patents (page 30), says: 'The utility of the change, as ascertained by its consequences, is the real practical test of the sufficiency of an invention, and since the one cannot exist without the other the existence of the one may be presumed on proof of the existence of the other. Where the utility is proved to exist in any degree a sufficiency of invention to support the patent must be presumed.' We do not say that the single fact that a device has gone into general use and has displaced other devices which had previously been employed for analogous uses establishes in all cases that the later device involves a patentable invention. *It may, however, always be considered, and when the other facts in the case leave the question in doubt it is sufficient to turn the scale.*" (Decision of this Court in Smith *vs.* Goodyear Dental Co., 93 U. S., 486.)

Practical carriage-makers regard the invention of a dash with laterally adjustable feet as of great value; and it was one that never occurred to them, though they labored under the very difficulties it removed, and strove themselves to escape from such difficulties. (Bagley, Q. 13 and 17; Kimberly, Q. 58 and 60; Pitner, Q. 16 and 17; Nutt, Q. 15.) The patentable novelty of this improvement, therefore—

"Is plain from the evidence and from the very fact that it was not sooner adopted and used; that it did not for years

occur in this light to even the most skillful persons. It may have been under their very eyes; they may almost be said to have stumbled over it, but they certainly failed to see it, to estimate its value, and to bring it into notice. * * * At this point we are constrained to say that we cannot yield our consent to the arguments that the combination of the different parts or elements for attaining the object in view was so obvious as to merit no title to invention. Now that it has succeeded, it may seem very plain to any one that he could have done it as well. This is often the case with inventions of the greatest merit. *It may be laid down as a general rule, though perhaps not an invariable one, that if a new combination and arrangement of known elements produce a new and beneficial result never attained before it is evidence of invention.*" (Decision of this Court in Webster Loom Co. *vs.* Higgins, 105 U. S., 580).

This Court also gave due weight to the *wide adoption* of an invention as helping to determine questions of patentability in the case of The Consolidated Safety Valve Co. *vs.* Crosby Steam Gauge Co., *supra*, saying:

"The fact that the known valves were not used, and the speedy and *extensive adoption* of Richardson's valve are facts in harmony with the evidence that his valve contained just what the prior valves lacked, *and go to support the conclusion at which we have arrived on the question of novelty.*"

In short, there can be no question but that a valuable invention has here been made by Mr. Peters, and "the courts are inclined to give a patentee the benefit of a liberal construction of the patent, and when it appears that a valuable invention has really been made to uphold that which was invented and which comes within any fair interpretation of the claims." (The decision of this Court in Merrill *vs.* Yeomans, 11 O. G. 970.)

The circuit courts have followed out the line of the above decisions, that proof of utility is persuasive as to the existence of patentability, in cases too numerous for citation.

INFRINGEMENT.

The appellees and defendants practically admit infringement of the patents sued upon, except in the matter of the fourth claim of patent No. 213,529. It is respectfully submitted that the channeled rail of the appellees' dash is for the purpose and performs the functions set out in this claim; and therefore, without going into the niceties of construction upon this point attention is simply directed to the law as laid down by this Court in Sewell *vs.* Jones, 91 U. S., 171:

"To infringe a patent it is not necessary that the thing patented should be *adopted in every particular.* If the patent is *adopted substantially by the defendants they are guilty of infringement.*

"The question of infringement depends upon whether the plan which the defendant has employed is in substance the same as the plaintiff's, and whether all the differences which have been introduced are not differences in circumstances not material, and whether it is not in substance and effect a colorable evasion of the plaintiff's patent."

Again, in Cantrell *vs.* Wallick, 35 O. G., 871, this Court said:

"The rule was well stated by Mr. Justice Clifford in delivering judgment in the case of Machine Co. *vs.* Murphy, 97 U. S., 120, when he said that—

"'In determining the question of infringement the court or jury are not to judge about similarities or differences by the names of things, but are to look at the machines or their several devices or elements in the light of what they do or what office or function they perform, and to find that one thing is substantially the same as another if it performs substantially the same function in substantially the same way to obtain the same result, always bearing in mind that devices in a patentable machine are different, in the sense of the patent law, when they perform different functions or in a different way to produce substantially a different result.'

"Tested by this rule the charge of infringement made against the defendant is clearly made out."

It is therefore prayed that this case may be remanded to the lower court, with instructions to enter a decree for an injunction and account.

Most respectfully submitted.

BENJAMIN BUTTERWORTH,
Of Counsel for Appellant.

Office Supreme Court, U. S.
FILED.
JAN 24 1889
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 66.

GEORGE M. PETERS, Appellant,

vs.

JULIUS A. HANSOM and COURTLAND C. VAN CAMP,

Composing the Firm of HANSOM, VAN CAMP & CO.

On Appeal from U. S. Circuit Court, District of Indiana.

BRIEF FOR APPELLANT (Complainant),

By WM. HUBBELL FISHER.

UNITED STATES SUPREME COURT,

OCTOBER TERM, 1888.

George M. Peters,

Appellant,

vs.

Julius A. Hansom and Courtland C. Van Camp,

Composing the firm of Hansom, Van Camp & Co.

ON APPEAL FROM U. S. CIRCUIT COURT, DISTRICT OF INDIANA.

BRIEF FOR COMPLAINANT,

BY WM. HUBBELL FISHER.

This is a suit in equity for the infringement of Letters Patent No. 213529, dated March 25, 1879, granted to George M. Peters, Complainant, for Improvements in Vehicle Dashes, upon application filed June 19, 1875; and of the Reissued Letters Patent No. 9891, dated October 11, 1881, granted to George M. Peters, for Certain Improvements in Vehicle Dash Frames, upon an application filed June 15, 1881, the original of which Letters Patent No. 224792, dated February 24, 1880, application whereof was made May 5, 1879.

The Bill of Complaint is in the usual form, and sets forth that the complainant, said George M. Peters, is the sole and exclusive owner of the said Letters Patent, and is the senior member of the Peters Dash Company, of Columbus, Ohio; is manufacturing and selling thereunder; and makes the usual charges of notice of infringement, of continued infringement

UNITED STATES SUPREME COURT,

OCTOBER TERM, 1888.

George M. Peters,

Appellant,

vs.

Julius A. Hansom and Courtland C. Van Camp,

Composing the ffrm of Hansom, Van Camp & Co.

ON APPEAL FROM U. S. CIRCUIT COURT, DISTRICT OF INDIANA.

BRIEF FOR COMPLAINANT,

BY WM. HUBBELL FISHER.

This is a suit in equity for the infringement of Letters Patent No. 213529, dated March 25, 1879, granted to George M. Peters, Complainant, for Improvements in Vehicle Dashes, upon application filed June 19, 1875; and of the Reissued Letters Patent No. 9891, dated October 11, 1881, granted to George M. Peters, for Certain Improvements in Vehicle Dash Frames, upon an application filed June 15, 1881, the original of which Letters Patent No. 224792, dated February 24, 1880, application whereof was made May 5, 1879.

The Bill of Complaint is in the usual form, and sets forth that the complainant, said George M. Peters, is the sole and exclusive owner of the said Letters Patent, and is the senior member of the Peters Dash Company, of Columbus, Ohio; is manufacturing and selling thereunder; and makes the usual charges of notice of infringement, of continued infringement

and damage to complainant; and propounds to the defendants seven interrogatories, as to whether they have made dashes like those described in the aforesaid Letters Patent, No. 224792, and Reissue No. 9891, and prays the usual relief of injunction and account.

An amendment to the Bill of Complaint alleges that each of the dashes herein complained of as infringing the Letters Patent No. 213529, is the same dash as complained of as infringing the Reissue No. 9891, and that each of the feet dash complained of as infringing Letters Patent No. 213529, is the same foot complained of as infringing Letters Patent (Reissue) No. 9891.

The answer denies that the said Peters was the original and first inventor of the improvements claimed in the said Letters Patent; and denies that the said inventions were patentable, novel and useful; and also denies that the said Reissue No. 9891 was surrendered for good and lawful cause, or was for the same alleged invention; alleges that the said reissue is invalid, because it was not surrendered because it was inoperative and defective; that it contains new matter not in the original Letters Patent. It denies that defendants are the manufacturers of any kind of dashes or dash feet; denies notice of infringement; alleges that those feet and dashes that they sold were purchased in the open market; in answer to the interrogatories in the bill of complaint, they admit that they have sold the descriptions of dashes and feet (described in said questions) as independent articles aside from the vehicles to which they were attached; they deny that the dashes or feet sold by them infringed the patents of complainant. They admit that all of the dashes or feet sold were made by other parties than the Peters Dash Company, or the

Columbus Buggy Company. Their amended answer sets forth the names of certain parties whom it alleges knew of the public use of the improvements prior to the date of their invention by George M. Peters.

Infringing dashes made by defendants are put in evidence by complainant, it being stipulated between complainant and defendants that the dash marked "Dash A," sold with feet; dash marked "Dash B," and dash marked "Dash C," were publicly sold by the defendants, at their store in Indianapolis, Ind., in the course of trade, October, 1881, before the suit for infringement was commenced.

NATURE OF INVENTION.

Prior to the date of the complainant's invention of the improvement in vehicle dashes, set forth in Letters Patent No. 213529, vehicle dashes were made either of wood or of an iron frame covered with metal sheets or a leather cover. Dashes were connected to the vehicles by means of feet or braces. In the leather covered dashes, these feet were at one end solidly welded to the lower bar of the dash frame, and at the other end screwed to the vehicle.

These iron legs and the iron frame of the dash formed one continuous piece. The frame and legs thus forming one integral series of bars were afterward covered with leather. This leather covering encased both the front and rear side and edges of the dash. The covering was usually made of two pieces of leather, one piece the size of the front and the other the size of the back of the dash.

This cover wholly covered the iron frame and concealed it from view, the purpose of the frame being analogous to that of the bony parts of the animal, viz: to support the

leather envelope or casing. The leather was securely sewed on all sides of the frame, both above and below the horizontal bars and at each side of the vertical bars thereof, thereby preventing the leather of the dash from bulging, and securing in place to the frame, and also forming handsome leather panels between the frame. The feet projected out from between the opposite layers of leather, which latter were sewed closely together where the feet left the leather.

Below the dash proper was the skirt, which consisted of an extension of the leather of the dash downward in front of the feet, for the purpose of hiding the latter from view, and to cover the usual space present between the lower edge of the dash and the upper edge of the front of the vehicle body.

These dashes were custom made; that is to say, each dash was specially made for and to fit the specific and individual vehicle onto which it was to be placed.

To this end the feet were forged to the dash at a given distance apart, viz: so as to come at the right and best place for attachment on that specific vehicle.

The feet being thus properly welded to the frame, the latter was covered with leather sewed substantially as before described, and it was then attached to the vehicle.

In the event of the breakage of one or both of the feet of the dash, by reason of the driver bracing his feet against it in the case of a runaway horse or team, or by reason of a collision, or by the vehicle being upset, repairs were, of course, necessary. The breakage of the feet usually occurred at or near their junction with the lower bar of the dash.

Their repair in such cases necessitated the ripping up of the leather of the dash, and usually the introduction of wet cloths to prevent the heat of the blacksmith's forge, into

which forge the lower portion of the frame of the dash was necessarily inserted in order to bring it to a welding heat, to enable a new foot to be successfully and properly welded to the frame.

This operation was, of course, a slow and tedious and expensive one. The dash, after being thus manipulated, lost much of its fresh look, and was not so neat a job as when first made.

Prior to the invention of the complainant, set forth in the letters patent No. 213529, now in controversy, and infringement of which is hereby claimed, no provision existed for the lateral adjustment of the dash foot along the line of the dash, so as to enable the vehicles having bodies of different widths to use a dash of the same size, the feet being fastened at a given point onto the front portion of the vehicle body, and at the same time enable the dash to be attached to these feet without marring the leather of the dash, and without compelling the cover of the dash to be ripped apart and pushed back in order to weld or re-weld the foot to the bar of the dash at a desired point of contact in order that the foot should be connected to the vehicle body at the strengthened part of frame intended to receive said foot. It may be here remarked that by far the greater number of vehicle bodies now made, consist essentially of thin side boards and thin front rear end boards and the bottom. The front and rear boards are connected to the sides. At the point of junction of the side and end boards a vertical wooden corner bar or post is placed. This wooden bar is a convenient means whereby the side and end boards are secured together, the end of the end board, and the end of the side board, being fastened thereto as well as to each other. This corner bar

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is the only convenient, and indeed, the only possible place to which the foot of the vehicle dash can be properly fastened ; if the foot were attached at any other point in the thin front portion of the body. the thin substance of the board would be too light to hold it, and when subjected to the ordinary pressure in the common use of the vehicle, it would break and split the front part of the body.

The invention of complainant, described in and covered by the Letters Patent No. 213529, now in controversy, constituted a marked advance in the art of manufacturing dashes for vehicles. It enabled dashes of a given size to be readily, easily and quickly applied to the vehicle body, be that body wide or narrow. It enabled the dash to be fastened directly to the body, and the bolts whereby the dash is to be attached to the vehicle to be placed at those points in the vehicle body, namely, to the corner bars or posts where the greatest strength is present for holding the bolts and upholding the dash. It enabled the dash to be secured to the vehicle body by intervening feet or equivalent connections for attachment to the feet, after the feet were properly secured to the vehicle body at the points thereon.

It further enables the feet to be first placed on the vehicle body before the dash need be attached thereto, the dash being subsequently attached after the feet were thus secured to the vehicle body, and painted or otherwise ornamented along with the body itself and as a part thereof. It enables all this to be done, and all these advantages to be obtained without in the least marring, or otherwise injuring the leather cover of the dash. The results from the invention of Mr. Peters were wide-fold and most valuable and important, namely,—vehicle dashes and feet provided with the invention

described in and covered by the Letters Patent of Mr. Peters, could be manufactured as independent articles of manufacture and sold to the carriage makers in quantities. As a result of such an opportunity, the maker of the dash, inasmuch as he manufactured large numbers of them, could afford to provide a large and expensive plant of machinery, whereby he could manufacture these in large numbers and at the same time improve the quality, and furnish to the trade a more perfect article of manufacture and at a far cheaper price, than the maker of a few hand made dashes wrought in his own special factory for his own vehicles, could possibly do. It is well known to your Honors, that in any branch of industry where large numbers of the article are made, the tendency is to make a perfect article at a cheaper rate than could be furnished by a large number of separate individuals, each making a few of each article, now and then, to supply their own varying and fluctuating wants. By the invention of Mr. George M. Peters, the complainant, the little manufacturer of country towns could be supplied with a first-class article of dash, adjustable as aforementioned, and easily applied to the various sizes of vehicles he happened to have on hand, and this dash be furnished of as good a quality and at as cheap a price as his more ambitious neighbors in the larger manufacturing cities could provide for themselves by their own make. It is evident therefore, that the invention of Mr. Peters was a positive advantage, economically considered, to the trade of carriage manufacturing itself, and also to the public at large who were thereby enabled to secure at a lower price, an excellent article of dash, adapted to their wants.

POINTS OF PETERS' INVENTION.

First. Peters was the first to conceive of making a footless dash adjustable to vehicles of different widths.

Second. Peters was the first to combine with a footless dash the principle of lateral adjustability, whereby the dash could be applied to vehicles of different widths. For this reason the dash he produced is a new combination heretofore unknown in the art.

Third. Peters was the first to apply the principle of lateral adjustability to the lower bar of the frame of the leather covered dash for the purpose of enabling it to be applied to vehicles of different widths.

Fourth. Peters was the first to form a slot or a longitudinal opening in the ends of the lower bar of the dash frame for the purpose of lateral adjustability.

Fifth. Peters was the first to provide bearings on each side of this longitudinal opening, whereby the dash could be applied to vehicles of different widths, the sides of the lower bar of the dash forming bearings against which the vehicle or the feet connecting the dash to the vehicle might rest and be secured.

Sixth. Peters was the first to provide in the lower bar of the dash a longitudinal channel, near the end of the lower bar, thus providing a thin central web easily punched in the manufacture of the dash and the vertical faces above and below the channel, and making the vertical faces serve as bearings for the impinging vehicle or dash foot, to which the dash was secured.

The advantages of this novel formation of the lower dash bar near the ends, by there providing a channel and thin web, rendered the manufacture of the dash cheaper and

more expeditious, and made the latter lighter and equally as strong as when the bar was without such channel.

This construction is an improvement in the matter of carrying into effect the invention set forth in the Letters Patent No. 213529, and is covered by the subsequent patent, No. 224792, and the re-issue of the latter.

CORROBORATIVE TESTIMONY THAT PETERS' INVENTIONS ARE DECIDED AND VALUABLE IMPROVEMENTS.

Disinterested corroborative testimony shows that Peters' inventions were unknown to the art at the time of his invention thereof; that they would have been as eagerly adopted if known before Peters' invention, as they were upon the invention and introduction of them by Peters.

Asher F. Bagley, Augustus D. Kimberly and Wm. C. Pitner were among the witnesses who rebutted defendants' testimony.

Mr. Bagley was of the firm of Bagley & Rose, engaged in the manufacture of carriages and so forth, at LaPorte, Indiana, beginning November 7, 1853, and extending over a period of five years.

In Q. 13 (page 71 of record), he is asked:

State whether or not, during the time Rentfrow worked for Bagley & Rose, he made a dash or dashes having laterally adjustable feet or attachments for the purpose of connecting them to vehicles of different widths.

A. No, sir; I never knew anything of the sort being done at that time. We would have been very much pleased had we known any such way. We had to forge our feet out of Swedes iron; poor iron they couldn't be made of—couldn't stand the turning of the corners. It would be a convenience

in shipping buggies in packing them. It would have been a greater convenience in saving work than in any other; it would have saved half the work.

And in Q. 19 he is asked:

Q. 19. What advantage, if any, would there be in using channel iron or iron made channel shape in the lower bar of an iron frame, leather covered, adjustable, footless dash, over that of any other form of iron?

A. There would be an advantage in that the holes could be more easily punched through the channel iron than if it was solid bar iron; it would be lighter and sufficiently strong.

Mr. Kimberly, a carriage blacksmith for Bagley & Rose, and for others, is asked by the defendants in cross-examination:

Q. 27 (page 77 of record). In answer to question 12, you say that if Wm. Rentfrow had ever made any dashes like those described in questions 7, 8, 9, 10 and 11, at the shops of Bagley & Rose, you would have known such fact. Do you mean to say that you would have known it if he had made them at any time while he worked there, or only if he had made them while you worked there?

A. He worked there but a short time previous, and if he had ever made such a dash at any time, it would have been used afterward.

In re-direct examination he is asked (page 80 of record):

Q. 59. The examiner will now please read to you question 27 and your answer thereto, and I will ask you to explain what you mean by that part of your answer, viz: "It would have been used afterwards?"

A. The new and novel mode of attaching the feet to the dash was very much cheaper than the old, and a great saving of labor.

Mr. Pitner, a carriage blacksmith, worked for Bagley & Rose as carriage blacksmith, and is now a carriage maker.

Mr. Pitner is asked, (page 84 of record):

Q. 35. Did Wm. Rentfrow, while in the employ of Bagley & Rose, ever make any dashes of any kind and sell them to a man that took them South?

A. Not to my knowledge.

Q. 36. Had he done so, would you not have known it, and did you know where each dash made in the shops of Bagley & Rose was sold and taken?

A. I think I would, from the fact that in those days dashes were never made and sold as now, separate by themselves. It would be almost an impossibility for a workman to make two dashes and ship to one party without my knowledge of the circumstances. Well, of course, I didn't know where each one that was sold was taken.

In re-direct-examination, he is asked, (page 85 of record).

Q. 42. Do you or not consider the making of dashes with adjustable feet or with laterally-adjustable feet or attachments different in principle and a departure from the general way of doing work, as referred to in your answers and question 33?

A. I do.

Q. 43. Would or would not the making of such a dash as described in the last question have created a general talk among the workmen employed in the shop, as referred to in your answer to cross-question 34?

A. Yes, it would.

The first claim of the patent is for "The combination of a dash and laterally-adjustable attachments, whereby the same may be connected to vehicles of different widths, substantially as set forth."

The second claim is for "A dash or dash frame having

slots or openings whereby attachmeuts may be made at different points, substantially as and for the purposes set forth."

The third claim is for "A dash provided with bearings having slots or openings, substantially as and for the purposes specified."

Claims 2 and 3 have reference to the dash as made irrespective as to whether feet are used on the dash or be applied directly to the vehicle body, the dash being provided with adjustable devices for the lateral adjustment of the connecting bolts or feet, so that the said bolts and feet may be applied to the vehicle body at its corners which are the only points at which the dash could be connected to the vehicle, without cutting open the dash, and rewelding the feet.

The fourth claim is for "A dash frame provided with bearings, arranged to strengthen the frame in those parts whereby the dash is to be connected to the laterally-adjustable feet or to the vehicle."

This claim is for an improved mode of constructing dash frames whereby the frame is strengthened at the point where the new invention has been applied, at the same time affording a proper bearing and the sides of the slot for the foot or the vehicle body to which it is secured.

The second patent in controversy is the Re-issue No. 9891, dated October 11, 1881, and is not the re-issue of the patent No. 213529, but of the patent 224792, dated Feb. 24, 1880, The original and re-issue are exactly alike except the following differences: In the re-issue a single sentence is found immediately after the 42 folio on page 27, not found in the original patent. This sentence is not one of description, and only specified some of the additional advantages derived from the bearings being flat over being otherwise

shaped, the following, among other advantages obtains, viz: that the web allows the rail or bar to be readily and quickly perforated, the thick parts, however shaped, connecting said web serving as supports or bearings for the attachment of the foot or other portion of the vehicle to which the dash is connected.

Claims 3 to 13 inclusive of the re-issue are the same as claims 1 to 11 of original patent 224792.

Claims 1 and 2 of the re-issue are narrower than certain of the claims of the original patent.

The invention covered by this re-issue consists in general in two main features. One of these relates to the manufacture of the dash in sections, in a novel and valuable manner. The other relates to the formation of the lower bar of the dash, and to the formation of the dash foot. That portion which relates to the making of the dash in sections is hereby omitted, not being pertinent to the present issue. One of these novel features of the invention relevant to this case, consists in the formation of more particularly the end portions of the lower bar of the dash with a channel and the formation of the dash foot also with a channel. Between the upper and lower faces of the dash bar a thin web is thus present. This formation secures in both the lower bar of the dash and the foot extraordinary strength and lightness, and enables them to be cheaply manufactured. The invention is an improvement upon the previous patent which we have considered namely, No. 213529, for adjustable dashes and feet, and enables the invention described in that patent to be embodied in a very advantageous form. The lower bar thus constructed, affords a bearing both above and below the slot against which the dash foot and vehicle body could impinge when

secured to the dash bar, and the web being easily cut away enables the slot to be easily formed during the process of manufacture. In relation to this point, the patent speaks as follows,– Folio 41, last paragaph on page 26 of Record, –By constructing dash frames in the manner described much of the expense incurred in the ordinary mode of manufacture is saved. The lower rail is made broad and flat, so that the slot "a" or holes "a" can be made therein and have a strong bearing for the attachment of the feet."

Also in paragraph 6, on page 27 of the record, the patent says,– The wide vertical flat faces of the lower rail afford a desirable bearing for the dash foot or vehicle body (as the rail can be readily perforated for bolts or rivets, and the thick edges left above and below the perforations are first rate bearings far said foot or body), and possess great advantages over the customary convex or oval rails, the central portion of which, being thick, renders them hard to punch, and the edges afford no flat surface for said foot or body to press against. The rail, therefore, when more or less flat on one or both sides, becomes a modification of the forms of rails shown herein and possesses some of their advantages.

"Another advantage of that portion of my invention which relates to channeling or recessing the foot, is that the same may be readily cast of malleable iron, the channeling obviating the injurious effects arising from the presence of shrunken corners in thick malleable iron castings. The channeling or recessing of the foot enables the latter to be made light and thin and to be better annealed." (See paragraph 6, page 28 of the record.)

The first claim is for "A vehicle dash whose lower bar is provided exteriorly with a channel or recess, the metal on

either side of the channel or recess affording a bearing for the dash foot or other portion of the vehicle to which the dash is connected, for the purposes specified."

The second claim is for "A dash whose lower rail is composed near or at the ends, of two thick portions united by an easily-perforated web, for the purposes specified."

The third claim is for "A dash provided with a rail having vertically-flat sides, one or both of said sides being exteriorly channeled, substantially as and for the purposes specified."

The tenth claim is for "In combination, a dash frame and a rail provided exteriorly with one or more channels and bolt holes or slots in the channel and through the rail, said holes being of smaller diameter or width than the width of the channel, substantially as described."

The eleventh claim is for "The foot channeled on either or both sides, substantially as and for the purposes specified."

THE PUBLIC BY THEIR PURCHASES OF THE PETERS DASH HAVE EVIDENCED ITS NOVELTY AND UTILITY.

These dashes have been exceedingly popular.

That complainant has performed his duty in introducing them to the public is evident.

The testimony shows that the Peters Dash Company and the Columbus Buggy Company (which are one and the same firm), up to and before the date when this suit was begun, had manufactured 500,000 dashes, embodying the invention set forth and described in Mr. Peters' patents. Of these, 100,000 embodied the invention described in and covered by the patent 213529;—400,000 embodying said invention 213529 and also reissued patent 9891. 460,000 were not

only manufactured but had been sold, before the date of the commencement of this suit; 40,000 being on hand to supply the demand of customers for the spring trade of the year. (See *E. H. Mooney's testimony*, pages 46 to 50 inclusive).

The testimony further shows that the said firm, Peters Dash Company, manufactured up to the time this suit was begun about 450,000 dash feet, embodying the invention described in and covered by claim 11 of the reissue. (See *testimony of Mooney*, page 50 of record, A. 8 and 9).

The same reason, viz: that the public has bought the Peters dashes from the complainant in large quantities, has led the defendants to infringe. The popularity of and demand for the Peters dash caused the defendants to furnish it. It constituted a lucrative trade and led them to defy the Peters' patents.

INFRINGEMENT.

The testimony shows that due notice was given to the defendants before the commencement of this suit, that they were infringing Peters' patent, and that due opportunity was given them to desist from the further sale of dashes which were infringements of the said patent. See the *testimony of W. C. Ewing*, page 44 of the record, Q. and A. 5 to 8 inclusive.

The dashes and feet sold by the defendants are shown in the exhibits marked "Defendants Dash, Complainant's Exhibit A" and dash feet marked "A"; also in defendants' dash B, "Complainant's Exhibit B," and also in defendants' dash C, "Complainant's Exhibit C." These dashes consist of an iron frame provided with a leather cover. They are footless

dashes, that is to say,--they are dashes whose frames are made without feet. They are dashes made after the specification of the complainant's patent, and are provided with complainant's device for enabling them to be so made without feet, and they are also provided with devices such as described in and covered by Letters Patent No. 213529, for enabling the bolts connecting the dash to the vehicle, or the dash feet and the dash to be adjusted laterally with reference to the vehicle, so as to enable the dash itself, or when feet are used then the feet to be connected to the vehicle body at the corner posts by bolts passing through these corner posts, which latter, as we have seen, are the only available points of connection of the dash to the vehicle.

Dash "A" has a lower bar provided with longitudinal slots, extending laterally through which the securing bolt may be passed at the desired point, thereby puncturing the leather only at that point and leaving the leather of the dash otherwise intact. A is provided with a channeled bar, whose faces on the side of the slot are rounding.

The feet A are channeled as specified in complainant's patent No. 9891. Dash "B" is a shorter dash having a very long cut out slot, and bar with flat faces. Dash "C" is curved and is a high dash, and has a channeled lower bar, whose faces are rounding and with two holes punched in it. The dashes bear evidence of having been in use. The lower bar of each dash is provided above and below the slot with vertical faces or bearings against which the dash feet or vehicle body may rest when the dash is secured thereto.

CLAIMS INFRINGED.

Defendants' dashes infringe claims *One*, *Two*, *Three* and *Four* of the Peters Patent No. 213529, and claims *One*, *Two*

and Three of Re-issue No. 9891. Defendants' dash feet "A" infringe claim eleven of said Re-issue.

ALLEGED ANTICIPATION.

Let us take up the question of Anticipation. The defendants took the testimony of four witnesses in rebuttal.

The first of these witnesses was Richard G. Wood, who testified that channel iron was known and in use prior to the date of complainant's invention. He says that he "fitted up a large lot of iron for Wood Brothers & Co., of Bridgeport, Connecticut, in 1878 for their landau carriages, which they are making, which they used this channeled iron for dropping the tops, and for holding the tops up in position in different ways. These irons were fitted up with poles, with nuts in them for adjustable purposes."

He fails to tell us how these slots rendered the articles adjustable, and how the poles were arranged in regard to the iron, and nobody would know from his testimony, what the device was to which he alluded. (A. 5, page 2 of addition to record.) In the attempt to make a comparison between the ordinary channel iron and T rail iron, he says that slots were made in the web of the railroad iron for adjustment.

In answer to this, it may be replied, that not only is the railroad iron of substantially different shape from what is known as the ordinary channel iron, but there is no connection between the slot in the web of railroad iron and the invention of complainant. It is his combination which gives to the complainant's invention its dignity and its value. No one in looking at the common railroad iron would be led to construct a dash according to Mr. Peters' invention. I am not now looking at the invention after it is made, but before it is made. Many of the valuable inventions after they are made soon

grow to be considered as things well-known and simple, and to be regarded as things that anybody might naturally think of. The railroad iron is not provided with the proper faces on either side of the web for the proper support of the bearing piece, such as the dash foot, and in the next place, there is no combination present of the railroad iron and the support of the piece, such as a dash foot, or face of the vehicle, and so combined with the lower bar of the dash, as that the parts above and below the slot shall form, and constitute, bearings for the upright vertical supporting pieces. As soon as the dash foot might be braced against the dash by means of the securing bolt, and the bolt tightened, the edges of the railroad iron would cut through the dash leather, and one of the objections which Mr. Peters' invention was intended to obviate, would be brought about.

When Wood comes to describe these top props, he does not speak of the slots, but refers to the channel iron being fastened to the wood work, which was the body of the vehicle. It appears also that the channel iron was located right back of the side part of the driver's seat. The channeled iron constituted the top edge of the side of the body, the body fitting into the channel of the iron, so that it appears that not only was the channel iron not slotted, but that the faces of the iron on either side of the web were not employed as bearings at all; hence such a use of channel iron would not suggest complainant's invention. Wood also describes a hand rail, which was made of single channel iron—that is, a channel in the under side of the posts. Of course, such a device is not the complainant's invention. Wood further goes on to remark that he first saw channel iron used in dashes in 1876, 1877, in Loomis & Avery's factory in Chicago, Ill.;

but he immediately gives way upon this point, and states that he is not positive that he did see them as early as that time, and that it was some time in September or October of 1878. It may have been as late as November; he thinks it was at this time that he saw the channel iron in dashes. He is not very positive. An examination of his testimony will show that he is not very positive as to exactly when he saw the channel iron in dashes in Loomis & Avery's factory. He is asked, question 57, page 8, of Addition to Record: "Are you positive that you saw these dashes made with channeled bar iron at Loomis & Avery's as early as November, 1878?" He answers: "I don't know whether they were made there or not, but I saw them the last time I was there." Wood is a machinist, and has been employed to some extent by the defendants in business matters (?). (See his answer 71, page 10, of Addition to Record.)

In answer to Wood's uncertain testimony, the testimony of Christ Binder, who was in the employ of the said Loomis and Avery, from the spring of 1875, until the fall of 1879, is to the effect that Loomis and Avery manufactured dashes for vehicles. He was foreman of the blacksmith shop, and superintended the making of the frame-work of the dashes. He says that "the bottom bar of the frame of the dash was made out of IX¼ flat iron; the side and top rails were made of oval iron, and a hole or holes drilled in the bottom bar to receive a bolt for attaching the foot to the dash." (A. 4, page 86 of Record.

He produced in evidence an iron frame of the kind that Loomis and Avery manufactured. He says that while he was in the employ of Loomis and Avery, they never used channel iron in making the frames of vehicle dashes. (Q. and

A. 7, p. 87 of record). He says that he would have known of the fact if they had done so, as he was foreman, and had charge of that department. (A. 8, page 87 of record).

He states that the first vehicle dash, he ever saw, made of channel iron was in the summer of 1883, at Abball & Co.'s shop in Chicago; the lower bar of the dash frame was made of channel iron. He is asked, Q. 10, page 87 of record,—"When did you first see a dash with separate feet?" He answers,—"I saw the first one at Loomis and Avery's, when I worked there." This was one of Peters' make,—namely, complainant's manufacture.

The witness Brackett, being called on behalf of the defendants, testified that channeled iron is commonly used for mechanical uses, and had been used in all frame structures where a stiffness and lightness is required.

In question 13, page 12 of addition to record, he is asked.—"Would any ordinarily skilled mechanic who had occasion to provide for the adjustment to different positions of the parts of any machine or device be able to apply this principle without suggestion or invention?" He replied:—"He could, for the reason that this would be the first manner in which he would try to make the connection, when, if it did not work, he would look for some other manner to make connection, for the reason that this is one of the simplest and easiest methods for connecting and allowing adjustment where both parts, when two pieces are used, are made of iron." That the position taken by Brackett in this deposition cannot include the invention of Peters, will be fully shown shortly hereafter. He is asked:

Q. 16. When and where have you seen channeled iron used in a road vehicle, and in what part of same?

A. I have seen it in the dashes of buggies and in the nuts on the axles in different buggies that I have used at different times. The exact time and place I would be unable to state, as I kept no memorandums whatever.

Q. 17 Did you ever see a channeled bar in a dash prior to 1876?

A. I could not answer this question positively as to date for the same reason that I gave above, as I only remember incidentally as noticing the use of that iron in those places at the time, and because I do not make the designing of that class of framed iron-work a specialty, and therefore do not keep posted in its constructions.

Q. 18. When and where did you ever see a channeled nut on the axle of a road vehicle?

A. You will find that there are patents issued on nuts of this character, and that although they may not have been in general use they were used, but the same answer for time and place as given to questions above would be my answer to this.

That amounts to his saying, he does not know either the time or place.

This was the only channeled nut he ever saw, and it appears that he saw this but once, but he can't recollect when he saw it. (Q. 18 to 22.) This channel of the nut was entirely independent of the central screw-threaded hole of the nut. (Q. 17 to 27, page 13, of Addition to Record.)

Q. 28. Did you ever see a slot in a vehicle dash for receiving the bolt connecting the foot to the dash, before 1876?

A. On account of this branch of business being out of my line, I could not mention any positive time, as I never paid any particular attention to the construction of vehicles.

Q. 29. Are you not aware that it is invention to combine two or more well known elements to produce new results over the old way of manufacturing?

For Insertion, page 23, Between Lines 1 and 2.

Mr. Binder is corroborated by Joseph H. Ballom (by 88 of Record).

Mr. Ballom is in business for himself. He was foreman of the carriage-trimming department from 1875 until the fall of 1879. He says that before 1877 Loomis & Avery used the Peters dash, the only dash then in the market; that afterward—viz., in the fall of 1877—they commenced making the adjustable foot dash.

The first vehicle dash he (Ballom) ever saw where the frame or a part of it was made of channeled iron was one made by the Peters Dash Company, which he saw in the fall of "'78" or the spring of "'79."

Loomis & Avery made no channel dashes while he was with them. He had every facility for knowing, as he covered all the dashes made and used by them.

A. I am unable to judge in such matters.

It appears, therefore, that the testimony in regard to the matter of dashes is entirely unworthy of notice. It must be seen that in the testimony of Wood and Brackett there are no instances in which slots in dashes were made prior to the complainant's invention of the device covered by letters patent No. 213,529, and, in the second place, they are unable to cite the use of channeled iron in dashes, either with or without the combination of the slot in the lower bar of the dash frame, prior to the embodiment of the same in the invention of appellant covered by reissue 9891.

The defendants took the depositions of these two following witnesses, Rentfrow and Post, attempting to show priority to the existence of the complainant's invention in slotted dash.

It must be borne in mind that the testimony of these two witnesses does not even mention the use or presence of channeled iron or the application thereof to the dash in any form whatever. The question, therefore, reduces itself to this: None of the testimony of defendants show that channeled iron was either used in a dash frame prior to the application thereto of the complainant, and, of course, therefore, never embodied in a combination with certain other parts of a dash, which combination is the complainant's invention covered by the reissue 9891, so that the only remaining question is as to direct anticipation of the lateral adjustment feature of the invention covered by the letters patent 213,529, by the witnesses Rentfrow and Post. If these two last-named witnesses do not conclusively and satisfactorily show that the invention of lateral adjustment was known to the public prior to the invention of the slotted dash by the complainant, then there is no anticipation shown in this case, and the complainant is entitled to a decree in his favor.

The testimony of Rentfrow is confused and contradictory. Moreover, he is contradicted in part by Post, the defendants' own witness.

If further examination of the testimony be desired, see digest of testimony filed by me in this case.

and subsequently in America. If this was a mere bench-work idea, we ask why was it not broached before?

Why did the world wait until Mr. Peters had invented and patented it before using it?

In the next place, Mr. Peters was the first to locate this slot in the dash, and the first to make provision there for its reception and accommodation.

In the next place, he was the first to conceive of employing a separable foot in connection with a dash, and applying that foot against the vertical surface of the dash by means of bolts, and so that the foot could be moved laterally along the plane of the dash, and secured at any point on said dash.

Assuredly such a conception rises far above the mere bench work of the carriage smith.

Let us look at the subject of Peters' invention from another stand-point, viz., the steps of the development by him of his invention, these steps being now apparent from the state of the art and his inventions themselves.

First. The dashes manufactured consist of an iron frame covered with leather, the feet of the dash being solidly welded to the frame.

Such dashes cannot be readily packed or transported, their feet forming a great obstacle to such packing or transportation. To overcome this obstacle he invents the separable foot shown in earlier letters patent No. 102,315, dated April 26, 1870.

In this way he can separate the foot from the dash and the latter can be conveniently packed or nested and transported.

In this invention, patent No. 102,315, each foot has a shank which runs up into a vertical hole between the front and rear sheets of his metallic dash, the sheets being so stamped that this hole is thus formed.

Furthermore, when Dr. Grimes is asked by the defendants (X 2, 37, Record, p. 54): "What is the reputation of Albert C. Post for honesty, truthfulness, and integrity in this community?" they received this no doubt unexpected reply:

"Mr. Post and I never had any trouble personally. I don't want to answer that question if it can be avoided."

This testimony is quite fully discussed in the brief of my associate, Hon. Benj. Butterworth, and the overwhelming force of the rebuttal testimony shows both Rentfrow and Post to be unreliable and unworthy of credence.

Both Rentfrow and Post are fully rebutted by the testimony of their employers, and by fellow-workmen; also by the parties to whom were delivered the jobs on which the alleged adjustable devices were said to have been located.

Mr. Peters' invention is not for a slot or a hole.

The location of a slot can in itself be patentable, if placed for the first time in a novel situation, whereby great utility results, provided that the inventor has, in so locating it, made a stride beyond the mere bench knowledge of the mechanic. Thus the transfer of a slot from the butt end of a needle to the point was clearly considered patentable.

Now, in the invention before us, Mr. Peters was the first to conceive of the lateral adjustability of the dash and its adaptation to vehicles of different widths.

Had this been a mere bench suggestion, which any mechanic would think of, why had not the host of carriage-makers thought of it before?

Thousands of dashes and carriages had been made in Europe,

This vertical hole receives the vertical shank of the dash foot, the dash is thus slipped down onto and over the feet shanks.

But the problem is still unsolved. This foot is stationary and is applicable to only one description or width of vehicle. Other steps must be taken, other modes ingeniously worked out before he can produce a dash which he can offer to the public as universally applicable to the wants of the carriage-builder.

He conceives of the idea of rendering the dash applicable to vehicles of various widths.

He decides that it will be not desirable to make the dash extensible of itself as is the envelope or curtain of the photograph camera.

He decides the dash must be stationary, and that the lateral movement must take place with the foot.

In other words, he conceives of separating the foot from the dash frame, not broadly, not generally (he had made one style of separation heretofore, as shown in his said patent No. 102,315), but he invents another specific mode of separation and application.

He conceives of taking the already well-known form of solid foot, of lengthening it, and of applying it thus lengthened to the vertical outside surface or face of the dash, and applying it anywhere along the lower bar of the dash, and there bolting it to the dash, viz., at the points where the downward extension of the foot will then be in conjunction with the body posts of the vehicle body fitted to receive the feet.

This conception and invention is not of a mere adjustability. It is a conception behind and above the question of adjustability, and renders the problem of adjustability practically possible. After Peters had worked out this vital and preliminary problem, he was enabled to pass to the further development of the invention.

The foot being thus made separable, lengthened, and arranged

to slide along the vertical outer face of the dash, he conceives of the idea of applying the slot, or a series of holes, in the lower dash bar, as a convenient means of facilitating such adjustment. He then adds the additional feature of concealment of the slot by the unbroken leather, enabling the builder using the dash and applying it to the specific vehicle he desires; to bolt it to the feet first secured to the vehicle at desired points by simply cutting a bolt hole through the leather covering of the dash at the desired point, all boring of the iron for the reception of the bolt and consequent marring of the leather of the dash thus being avoided, the bolt passing through the *slot* in the dash.

Now, in these conceptions there is surely invention. They reveal a keen, untiring student, possessed not only of a far-reaching insight into the possibility of the commercial utility of such an article, but of an inventive genius of a high order sufficient to cope with and overcome difficulties that had prevented the previous invention and construction of such dashes.

He does not stop here; but, conceiving of improving the manufacture of the article he had already invented, he applies the principle of the channeled bar to the lower bar of the dash. In this thin web thus formed at the base of the channel can be easily punched the slots in the lower bar before the dash is covered, or this thin web can be readily punched after the dash has been finished.

It is thus apparent that here is a combination of conceptions and a combination of parts, a novel and useful construction reached, which belong to a high grade of patentable novelty and invention.

Aside from the conclusive inherent evidence of the novelty and patenable invention obvious from the devices themselves, strong confirmatory evidence thereof is found in the testimony of carriage-builders and workmen. See testimony of Bagley (p. 71, ans. 13,

ques. 19); Kimberly (p. 77, ans. 27, and p. 80, ans. 59); Pitner (p. 84, ans. 35, 36, and p. 85, ans. 42 and 43); Nutt (p. 69, ans. 14, 15, and 16). These parties testified to the effect that the need for these improvements existed, and had they known of these devices they would unquestionably have used them.

The high probability of this prediction is certainly evidenced by the fact that up to the time of the beginning of this suit half a million dashes had been made by Mr. Peters, as shown by the evidence, and that, as I am personally informed by him, his own manufacture of dashes has subsequently run into the millions, and that hundreds of thousands have been made by unauthorized manufacturers.

Notwithstanding the statement which is so much harped upon by the defendants, that a slot is an old and well-known means of adjustment, and that therefore its application to a dash does not involve invention, it must be remembered that this slot is but one feature of the invention and that a negative feature. Slots are always like the valleys between the hills, the mere results of positive structure.

It has not been attempted by the defendants to show that the positive structure referred to in the Peters device is the same as the positive structure to which the slot is secondary in the other apparatus.

In the Peters device we find that this bearing place within the dash frame has not always been a part of the metallic dash frame. (See *Eberhart's testimony, Record*, p. 63, X Ans. 43.)

That it is a feature introduced by Mr. Peters as one of the steps in the development of this invention.

In this position it plays the part of a strengthening device to the dash itself of a mass of metal sufficiently extensive to permit the drilling through it of holes or slots, which was not possible in the narrow frames previously used, and also of affording a surface suffi-

ciently extensive to serve as a bearing against which the separable foot may be clamped with a sufficient degree of rigidity.

This mass of metal in the corner of the dash frame is a positive element of Peters' invention.

With regard to it we find that it was not originally a part of a dash frame; that it is itself the creature of Mr. Peters' invention.

Furthermore, we find that his invention did not require absolutely and did not always possess a slot in this positive feature as a means of convenient adjustment and attachment, so that therefore the slot is secondary to the positive feature in structure.

Mr. Peters is a pioneer in the improvement of dashes and in the art of their manufacture. By his efforts and inventive genius he has created a new and useful industry. He has rendered possible the manufacture of dashes as a specialty in large numbers of fine quality and at low prices. His dashes have been furnished as an article of commerce in the millions for the supply of the carriage-makers throughout our country; and this manufacture and supply has grown into one of the well-recognized industries which contribute to the wealth, comfort, and well-being of the people.

Peters' patent, 213,529, sued upon, is a pioneer patent.

Pioneer patents should be liberally construed.

Webster Loom Co. v. *Higgins* (105 U. S., 580).

A new combination of known devices producing a new and useful result (as that of greatly increasing the effectiveness of a machine) is evidence of invention, and may be the subject of a patent. Webster's improvement in looms for weaving pile fabrics, which consisted in such a new combination of known devices as to give to a loom the capacity of weaving fifty yards of carpet a day, when before it could only weave forty, held to be patentable, and his patent for the same, dated August 27, 1872, sustained.

Hammerschlag v. *Scamoni*, 7 Fed., 585 (593), where Blatchford, J., held that the article had created a new branch of indus-

try, and the patent securing said invention is entitled to a liberal construction.

American Bell Telephone Co. v. *Spencer* (20 O. G., 300), Lowell, J.

Standard Measuring Machine Co. v. *Teague et al.* (15 Fed. Rep., 392), Gray and Lowell, JJ.

Kimball et al. v. *Hess et al.* (15 Fed. Rep., 393), Wallace, J.

Winans v. *Denmead* (15 Howard, 330), Curtis, J.

The language of the Supreme Court in *Parks* v. *Booth* (102 U. S., 96) is pertinent in this case.

The Court says (p. 103): "Attempt is scarcely made in argument to show that any one of these exhibits embodies the entire invention of the complainant, but it is insisted that every feature of the patented improvement is found in some one or more of those publications. Suppose that is so, still it is clear that such a concession, if made, could not benefit the respondents, unless they can be allowed to extend the same comparison to two or more exhibits, as they do not contend that the entire invention is superseded by any one of their exhibits.

"Where the thing patented is an entirety, consisting of a separate device or of a single combination of old elements incapable of division or separate use, the respondent cannot make good the defense in question by proving that a part of the entire invention is found in one prior patent, printed publication, or machine, and another part in another, and so on indefinitely, and from the whole or any given number expect the court to determine the issue of novelty adversely to the complainant. (*Bates* v. *Coe*, 98 U. S., 31.)

"Common justice forbids such a defense, as it would work a virtual repeal of so much of the patent act as gives to inventors the right to a patent consisting of old elements, where the combination itself is new and produces a new and useful result. New elements

RECAPITULATION OF POINTS OF INVENTION.

The defendants have failed to produce a positive structure like or similar to complainants'. They have based their right to a judgment upon the fact that a hole is old, but they have failed to show a single device where the positive structure contains the hole and is anywise similar to that of complainants' in construction or in function.

Not only was Mr. Peters the first to conceive of making the dash, so to speak, adjustable to vehicles of different widths, but he was the first to provide a definite construction to carry his conception into effect. We challenge the defendants to produce a dash having such construction. They have not shown one. They cannot show one.

In carrying into effect his conception, Mr. Peters provided the vertical broad bearing, connected to the lower bar, for the purpose of a bearing.

This provision was new.

Combined with this was the idea of a separable foot, whose vertical face should lie against the vertical surface of the leather of the dash, and thus against the vertical face of the bearing beneath, and be capable of being moved back and forth laterally in the vertical plane of the dash.

This provision was novel.

In this iron bearing of the dash he provides the slot, and then covers the dash with leather, thereby covering the slot and concealing it wholly from view, with the object of enabling the leather to be punctured for the bolt connecting the foot to the dash, and no where else, thus allowing the bolt

to pass through the leather at the punctured point therein, and also through the slot, and at the same time the foot end covers the puncture around the leather and nicely conceals the same from view.

The combinations of the elements, viz:

1st. *Iron dash frame.*

2d. *Bearing connected to frame, the faces of the bearing being in the vertical plane of the dash.*

3d. *The slot or equivalent provision in the bearing, the slot being cut transversely to the vertical plane of the bearing.*

4th. *This dash, as a completed article of manufacture containing the combination of elements one, two, and three, and the leather covering over all, making, as an entirety, a new and valuable article of use and manufacture, having novel and useful functions.*

NOR IS THIS ALL.

This combination, this novel entirety, being now in being, permitted a novel and useful improvement to be made thereon, viz.: Peters conceived of thinning the longitudinal center of the bearing, that the slot or equivalent provision might be made in the bar and the weight of bar be diminished.

Defendant says that channel iron is old.

This statement is true, but it fails to reach Peters' improvement.

The Peters bar has these broad vertical faces above and below the channel, and these faces are placed there by Peters

for a purpose, viz., for bearings against the vertical face of the foot.

It is novel, first, to use the upper and lower faces of channel iron as bearings, and, secondly, to use them as bearings to resist *torsional twist or strain* of the bar.

So that whether we presume that a channel bar was absent from Peters' mind, and he conceived of thinning the center of the bearing already conceived of by him, or whether we presume that he took the channel iron and reconstructed it for his own purposes by changing the upper and lower portions for his improvement and for application to the combination already mentioned, he is in either case an inventor, and has produced a new article having a new and *useful function* and new in its *application.*

Finally. Therefore we reach the following:

The completed and improved Peters dash, as a new and useful manufacture, contains—

1st. *The iron dash frame.*

2d. *The bearing connected to frame, the faces of the bearing being in the vertical plane of the dash.*

3d. *The slot in the bearing and cut transversely through the bearing transversely to the vertical plane of the bearing.*

4th. *The bearing provided with channel and having broad vertical bearing surfaces above and below the channel.*

5th. This structure, including elements one, two, three, and four, in a novel combination and application, covered with leather, forming, as an entirety, a new and valuable article possessed of new and useful functions.

Respectfully submitted,

WM. HUBBELL FISHER.

in such a patent are not required, and if such a defense were allowed not one patent of the kind in a thousand of modern date could be held valid."

Respectfully submitted,

WM. HUBBELL FISHER,
Attorney for Appellant.

Robert Clarke & Co., Printers, Cincinnati.] *[October, 1888.*

United States Supreme Court.

OCTOBER TERM, 1888.

George M. Peters,
Appellant,

No. 66.] *vs.*

Julius A. Hanson et al.,
Appellees.

APPEAL FROM CIRCUIT COURT FOR THE DISTRICT OF INDIANA.

BRIEF FOR APPELLEES.

ARTHUR STEM,
Counsel for Appellees.

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APPEAL FROM CIRCUIT COURT FOR THE DISTRICT OF INDIANA.

BRIEF FOR APPELLEES.

This suit was brought on two patents for vehicle dashes, re-issue No. 9,891, and original patent No. 213,529, granted appellant. Both inventions were claimed to be infringed in a single form of dash.

The defenses relied upon are invalidity of patents—

1. For want of invention.
2. For want of novelty.
3. Invalidity of re-issue by reason of expansion as to all claims except the 3d, 10th, and 11th, which are found in the original, but which are invalid for both of the foregoing reasons.
4. Non-infringement.

Although the same dash sold by appellees was claimed to infringe both patents, for convenience we will consider the two patents separately. No. 213,529 has four claims sued on, as follows:

1. The combination of a dash and laterally adjustable attachments, whereby the same may be connected to vehicles of different widths, substantially as set forth.

2. A dash or dash frame having slots or openings, whereby attachments may be made at different points, substantinlly as and for the purpose set forth.

3. A dash provided with bearings having slots or openings, substantially as and for the purpose specified.

4. A dash frame provided with bearings, arranged to strengthen the frame in those parts whereby the dash is to be connected to the laterally adjustable feet or to the vehicle.

The first three of these claims refer to the means of adjusting the feet of a dash laterally.

It may be proper to premise by saying that vehicle dashes are connected to the body by feet, which are usually made "solid" with the frame. That is, the frame and feet are made at the same time, and welded together; and when the same manufacturer makes both the dash and the body, the feet of each dash are usually welded on the frame at such points as would fit the body for which they are designed. When the business grew and became, in the natural course, divided into specialties, dashes were made in large quantities and sold to carriage manufacturers, who made or bought the bodies elsewhere. If, then, the dash feet were made solid, they might not fit the various forms and sizes of bodies; so the feet were made separate, and attached to the dash by bolts at points most convenient.

As the dash is covered with patent leather, it is not convenient to bore through the iron frame after it is covered and in the hands of the consumer or carriage maker; hence, a hole was bored in the inner rail of the dash frame before it was covered, to receive the bolt for attaching the foot.

The vehicles to which the dashes were to be attached varied in width and shape, requiring the feet to be placed sometimes nearer together, sometimes further apart; hence it was not possible always to locate the holes in the dash frame at the exact point where they would be most con-

venient. Therefore two holes, or three, or four were made, so that if one did not come at the exact point required, another would. Then, sometimes it might be necessary or more convenient to adjust the feet at a point very near one of the holes, yet not exactly at it, or between two holes; so, to allow for such cases, or for more nice adjustment, a slot was made instead of two or more adjacent holes—a long hole instead of two or more short ones. This is the Peters "invention?" covered by the first three claims of No. 213,529. He claims it to be infringed whether the series of holes or slot is in the feet or the dash rail.

His invention consists in putting two holes or a slot in the rail or feet of a dash, instead of one hole. It certainly requires neither evidence nor argument to show that such a mechanical expedient did not require invention. There is scarcely the "shadow of a shade of an idea" for the claim to stand on. If this court found, in *Vinton* v. *Hamilton*, 104 U. S. 491, that a patent for a new and *very useful hole* was lacking in invention, it is not necessary to argue that the addition of two holes, or one longer hole, for precisely the same purpose, did not require inventive genius.

Atlantic Works v. *Brady*, 107 U. S. 000.
Pearce v. *Mulford*, 102 U. S. 112.

That Peters's two holes or slot did not require invention is self evident. It is the commonest mechanical expedient, resorted to every day in a thousand different devices. Mr. Wood testifies, p. 4, Addition to Record:

"Q. 25. Name some of the familiar uses in mechanics of slots for the purpose of adjustment, and describe the manner of their use.

A. They are so generally used in the construction of every thing that is made of iron, or that iron is used in the construction of, that it would be almost impossible to pick out any thing they were not used in for the purpose of adjustment."

But it was not new even in vehicle dashes. Rentfraw

testifies, p. 16, that between 1850 and 1856 he made dashes in this way:

"*Q.* 7. State whether or not, during those years, you made any dashes having laterally adjustable feet or attachments, for the purpose of connecting them to vehicles of different width. [Objected to as leading by counsel for complainant.]

A. Yes, sir; I did.

Q. 8. Please describe those dashes and attachments, or feet, and the manner of their connection to the vehicle.

A. Well, I make my dash, the bottom rail, long square place on it for to receive one, two, or three holes, as it may be, and a foot turned up with a square corner, with a hole drilled through it—one or two, as it may be—and bolt it onto the dash.

Q. 9. Please state how you connected such dashes to vehicles of different widths.

A. By turning up the foot to the right and one to the left, so as I could use them on either side of the dash.

Q. 10. Please state what were the shape of these feet, which enabled them to be turned up, as you say, to the right or left.

A. L-shaped, and turned up either to the right or left, then.

Q. 11. State whether or not these feet had more than one hole in them for connection to dashes of different widths.

A. Yes, sir.

Q. 15. You say, in your answer to question 12, 'I made mine with the corners the same as this, with the exception in this (referring to the drawing) of the long slot I had one, two, or three holes in, to suit the width.' How did the one, two, or three holes referred to, serve to connect the dash to vehicles of different widths?

A. If the body was wider than the dash, I would set my foot with the ends turned inward; if the body was narrower than the dash, I would set my feet with the ends turned outward, and bolt it just as it would come there."

Also A. C. Post, p. 31, between 1864 and 1868:

"*Q.* 5. State whether or not during those years that firm made any footless dashes, with separate feet for attaching them to vehicles.

A. They did.

Q. 6. State whether or not they made any dashes during those years having provision for lateral adjustment for the purpose of attaching them to vehicles of different widths.

A. They did.

Q. 7. Please describe those dashes, and the means for connecting them to vehicles of different widths.

A. The dash was fitted for the front of the body which they were attached to, and holes were drilled in the lower rod of the dash to attach the foot to them.

Q. 8. How many holes were drilled in the lower bar of the dash, and at what part of the lower bar were the holes drilled?

A. They were drilled sufficient distance from the out end to attach the foot to them—I think some two inches, or two and a half; from two to six holes."

Such evidence is really unnecessary, as multiplying the holes or making a slot is exactly what any mechanic of the most ordinary intelligence would do should the occasion require it.

The fourth claim is as follows:

"A dash frame provided with bearings, arranged to strengthen the frame in those parts whereby the dash is to be connected to the laterally-adjustable feet or to the vehicle."

This is simply re-enforcing or strengthening the dash frame at the point where the feet are attached, to meet the additional strain.

In the Peters patent a special construction is used. If his claim is limited to his special construction, it may be good; that we need not discuss. The appellees use no such construction. The lower rail is made broad and of channeled iron. It is as strong in the middle as at the ends.

There is no infringement or identity between appellee's dash and the Peters patent, unless the claim is construed to be for a dash frame made stronger at the point where the feet are attached to it, to bear any extra strain. If so constructed, it is unquestionably invalid. He might as well claim a patent for strengthening or re-enforcing his garments at the points where they are most likely to wear out.

Reissue No. 9,891.

The second patent sued on is a re-issue, in which three claims of the original are expanded into five.

ORIGINAL No. 224,792.

1. A dash provided with a rail having vertically-flat sides, one or both of said sides being exteriorly channeled, substantially as and for the purpose specified.

8. In combination, a dash frame and a rail provided exteriorly with one or more channels and bolt holes or slots in the channel and through the rail, said holes being of smaller diameter or width than the width of the channel, substantially as described.

9. The foot channeled on either or both sides, substantially as and for the purpose specified.

RE-ISSUE No. 9,891.

1. A vehicle dash whose lower bar is provided exteriorly with a channel or recess, the metal on either side of the channel or recess affording a bearing for the dash foot or other portion of the vehicle to which the dash is connected, for the purpose specified.

2. A dash whose lower rail is composed near or at the ends of two thick portions, united by an easily-perforated web, for the purposes specified.

3. A dash provided with a rail having vertically-flat sides, one or both of said sides being exteriorly channeled, substantially as and for the purposes specified.

10. In combination, a dash frame and a rail provided exteriorly with one or more channels and bolt holes or slots in the channel and through the rail, said holes being of smaller diameter or width than the width of the channel, substantially as described.

11. The foot channeled on either or both sides, substantially as for the purpose specified.

The 1st, 10th, and 11th claims of the re-issue are found in the original; the 2d and 3d are added claims.

The charge of infringement is based upon the fact that appellees use channeled iron in the construction of certain parts of their dashes, to wit, the lower rail, to which the feet are attached.

The object is twofold:

First. Channeled iron is the form which best combines lightness with strength.

Second. Should it be necessary to make a new hole through the lower rail to move the foot, the web of the channeled iron is easily punched, without weakening the frame.

All of the claims of the patent alleged to be infringed are based on this use of channeled iron in a dash. It is unnecessary to consider them separately. That channeled iron in a hundred forms is used for a hundred purposes scarcely needs proof, as the fact is familiar to any one who has given any attention to mechanics, or is even ordinarily observing.

Mr. Wood testifies, p. 2, addition to Record:

"*A.* 3. Channeled iron, you might say, has been generally used in many different kinds of work and ways ever since I have been in the business. I first used it about twenty years ago in putting up hand rails and stairs.

Q. 10. State whether or not you are familiar with the use of channeled iron for the purpose—feet for any purpose.

A. 10. Yes; the feet of desks, stoves, machinery of different kinds, vehicles.

Q. 12. Were or were not the forms of channeled iron shown there in common use as early as 1870?

A. 12. Yes, sir; they were in general use at that time.

Q. 15. What is the object in using channeled iron instead of solid bars?

A. 15. Well, it's for the purpose of securing stiffness, lightness, and it is easy to work. It is easier to punch a hole through a light web than through a solid bar. It is economy to use it."

Brackett, p. 10, addition to Record:

"*Q.* 4. State whether or not channeled iron is a common form for mechanical uses; and if so, some of the uses to which it is put.

A. 4. It has been commonly used in all frame structures where stiffness and lightness is desired. I have known of its use since 1862, when I first took an active part in manufacturing. We use it in bridges, roof trusses, machine frames, floor beams, joists, tramways—in fact, hardly a frame structure but what it is used, more or less. These other classes of manufactories use it in numerous places, such as fence pickets, bottom rail of fences, in stove manufacturing, furniture manufacturing, sewing manufacturing, and in fact I hardly think there is any class of iron structures where lightness is required but that it could be used to advantage.

Q. 6. Should it be desirable to combine lightness and strength in the construction of vehicles, or any parts of them, would it require any invention or would it be novel to apply channeled iron for that purpose?

A. 6. No, sir; I think not, as channeled iron is in almost as common use as bar iron, and hardly any framed work is made where stiffness and lightness is required but that it is used, because it is the stiffest form in which iron can be used in carrying a load between two points, either suspended or in the form of a ——, and wherever a compressible strain occurs or cross-strain or any other strain than a purely tension strain, it is the chiefest iron to use, and it is in common use under such circumstances.

Q. 7. What other advantages or advantage, if any, is obtained by the use of channeled iron which is also old and familiar?

A. 7. Wherever two members running either at an angle or in the same direction, its great convenience is in the easy manner and strength with —— such attachments and connections can be made, on account of the thinness of its web, it being readily drilled or punched, requiring a great deal less labor and expense than flat bar iron, and on

this account it is in general use throughout the United States for the last fifteen to twenty years that I know of."

Even if Peters had been the first to use channeled iron for the purpose claimed, it would be simply the use of an old—very old, and very common—thing for a new purpose, which is not invention.

Tucker v. *Spaulding*, 13 Wall. 453.
Brown v. *Piper*, 91 U. S. 37.
Roberts v. *Ryer*, 91 U. S. 157.
Mosler Safe Co. v. *Master*, 127 U. S. 360.

The 10th claim is for the channeled frame, with bolt holes or slots in the channel, of a diameter smaller than the width of the channel. That is, a channeled iron frame, with the bolt holes made in the web. As it would never occur to any one to put the holes anywhere else, and as their size is in no way important, except that they be large enough to receive the bolt, we admit we are totally unable to see any thing even to hinge an argument upon, as to patentability. It is self evident.

Respectfully submitted,

ARTHUR STEM,
Counsel for Appellees.

Office Supreme Court U. S.
FILED.
JAN 24 1889
JAMES H. McKENNEY,
CLERK.

CONSIDERATION OF THE TESTIMONY OF RENTFROW AND POST AND OF THE REBUTTING TESTIMONY.

Alleged Anticipation at La Porte.

RENTFROW, in answer to question 5 (page 16, Addition to Record), states that during the years 1849, '50, '51, '52, and '53 he was blacksmithing at La Porte, Indiana.

In question 7 he is asked: "State whether or not during those years you made any dashers having laterally adjustable feet or attachments for the purpose of connecting them to vehicles of different width." Answer. "Yes, sir; I did."

In cross-question No. 153, page 30, he is asked, "What does the word lateral mean?" to which he replies: "I suppose it means a changeable foot or something of that kind. I don't know exactly." And in cross-question 154, on being asked, "What does the word vertical mean? he answers: "I presume that means changeable—something of that kind."

To resume.

On being asked to describe these dashes and attachments or feet and their mode of connection to the vehicle he says:

Answer. "Well, I make my dash, the bottom rail, long, square place on it for to receive one, two, or three holes, as it may be, and a foot turned up with a square corner with a hole drilled through it—one or two, as it may be—and bolt it onto the dash."

Attention is called to the use by Rentfrow of the present tense in the foregoing answer; also to his twice-repeated expression, "as it may be."

Rentfrow says (Ans. 13, page 17) the dash foot was of an L shape, with holes in it to attach on the dash. If the body was wider than the dash he would set his foot with the ends turned inward and would set his body with the ends turned outward, but bolted just as it would come there.

Q. 16. By "bolted just as it would come there," what do you mean? A. Wherever my holes are drilled in the foot the holes drilled in the dash will correspond and hold it on.

It thus appears that if he had ever done this, which we will easily show is not true, that he had a different plan from that of plaintiff, and that, in the next place, he had never discovered the true idea of lateral adjustment, and he says he "bolted this just as it would come there." In other words, he would have to move his feet so that the holes in the dash and feet would come opposite to each other; therefore he would have no certainty as to whether his feet would come out at the proper place on the vehicle body—namely, the corner posts. It appears that these feet were to be bolted, according to Rentfrow, not to buggies, but to vehicles.

In the matter of repairs he says that he repaired simply by drilling a hole through the bottom of the dash, turning up a new foot—square or any angle—and drilling a hole through and bolting it fast to the dash. (Ans. 18, page 17, Addition to the Record.)

It will be observed that Rentfrow speaks of these modes of bolting dashes to feet as a regular and continuous rule or principle which he employed while at La Porte in the employ of Bagley and Rose. He states that the date when he made the dashes referred to, at La Porte, Indiana, was between the years 1850, 1855, 1856, *as near as he can recollect.* He says that the dashes he made at La Porte by drilling holes in the bottom roller for receiving the foot he did not put them on himself; a trimmer or binder put them on.

In the matter of repairs, he says (Ans. 18) that he repaired simply by drilling a hole through the bottom of the dash, turning up a new foot square or any angle, and drilling a hole through and bolting it fast to the dash.

On cross-examination he says: "I did not mention anything of attaching a separate foot to a solid dash (Ans. 36) only by way of repairing dashes that were broken with solid feet."

If he be correct in this, then he could not have gotten any lateral adjustment on the new jobs of which he testifies, because it is necessary that the foot be seperable in order that it may be adjusted by moving it along the dash.

He says that he has made them with provision for lateral adjustment; that he has made them for different kinds of jobs; does not just recollect what kind of jobs. (Ans. 40.)

Q. 41. Can you not state any of these kinds of jobs? A. Buggies of different kinds.

Q. 42. Buggies of what kind? A. Well, I have made them for drop-front buggies, piano boxes, etc., and buck-boards.

Q. 43. When and where did you make them for drop-front buggies? A. I do not just recollect and I could not say just where.

Q. 44. Where did you make them for piano-box buggies? A. I could not say just where.

Q. 45. If you can't recollect where tell me when you made them for piano-box buggies? A. I could not just say that either.

Q. 46. When and where did you make them for buck-boards? A. I made some for buck-boards in Mishawaka, as near as I can recollect, between 1875 and 1878, along there.

When asked where he first made a dash containing a provision for lateral adjustment, &c., he says: "I made them in La Porte, between '50 and '55, '6, '7, or thereabouts, at Bagley and Rose's shop or Fisher Bros.'—I cannot say exactly which—as near as I can recollect" (Ans. 58). Is not this a very indefinite statement? He says that it was a carriage dash made out of five-eighths old iron. "I made two for a man that it happened to suit. He saw a dash I had made, and it happened to suit him, and he wanted me to make two dashes. I asked him the width of his body. He said he did not know the width of them; they were not built then. He wanted to take the dashes South with him. I went to work and built him two

dashes, and made him those with right and left feet, so he could attach them to any width of body that he wished. He paid for them and took them, and I never saw him since. The dash this man happened to see that I had made and it happened to suit him—it was a turkey-wing dash, with a scroll running around it." He saw this on the fair grounds at La Porte, where the dash was on exhibition (Ans. 59–62) for himself. It appears (Ans. 65, 66) that he did not own this fancy dash. It was a solid foot dash for a buggy owned by Fisher & Bros. or Bagley & Rose, he won't be positive which.

It will be apparent from a perusal of the testimony that Rentfrow stands solitary and alone in his assertions that he made these dashes and feet at La Porte, Ind. No other witness whatever corroborates him, but, as we shall see, he is amply rebutted by men who are undoubtedly acquainted with all that transpired at said shops. Even if he were not rebutted, his testimony of itself, confused and contradictory as it is, would not be sufficient to overcome a plainly described invention, promptly secured by letters patent and introduced to the public. There is no evidence that Rentfrow, even if we assume what he says to be true, ever prosecuted this invention or introduced it to the public. On the contrary, it is clear that he abandoned the same, that he never appreciated its importance to the public, and that he is testifying in the light of his present knowledge as to what he did in the days past.

REBUTTAL.

IN POINT-BLANK CONTRADICTION AND REFUTATION OF RENTFROW ARE THE FOLLOWING WITNESSES:

1st. Mr. ASHER F. BAGLEY, of the firm of Bagley & Rose, at La Porte, Indiana, which began business November 7, 1853, and quit May 12, 1876, Mr. Bagley then buying out Rose and continuing in the business. (See page 70 of Record, Ans. 1–4.)

Mr. Bagley says that he is acquainted with William Rentfrow. He says he commenced working for the firm in 1854 and quit in 1857. Mr. Bagley superintended the making of carriages. He was familiar with all the work done by Bagley & Rose. He lived right adjoining the shop, across the alley, and was always on hand; opened the shop himself and carried the key. He recollects the circumstances where a fancy dash with a solid foot, "turkey-winged," with a scroll around, was exhibited at the fair grounds, at La Porte, Indiana; that it was made in the shop of Bagley & Rose, and Rentfrow helped to make it; that Rentfrow was a very slow man, and he would not make such a dash in less than two or three days. (Ans. 5–10.)

Mr. Bagley, being asked (in Q. 11, page 71) to state whether or not

he remembered the following circumstances occurring while Rentfrow worked for Bagley & Rose, where he made a dash or two dashes (viz., "It was a carriage dash, five-eighths-oval iron. I made two for a man they happened to suit. He saw a dash I had made, and they happened to suit him, and he wanted me to make him two dashes. He said he did not know the width of his bodies. They were not built yet, and he wanted to take the dashes South with him. I went to work and built him two dashes, and made them right and left feet, so that he could attach it to any width body that he wished. He paid me for them and took them "), and whether it occurred while Rentfrow worked for your firm, he answered, " No, sir; he never did, nor any other man.

Mr. Bagley further says that Rentfrow did *no repairing;* that his work was entirely on new work.

AUGUSTUS G. KIMBERLY (page 74 of Record) is a carriage blacksmith. He worked for the firm of Bagley & Rose continuously from 1854 to 1858, first as an apprentice and afterwards as journeyman. Mr. Kimberly first became acquainted with Rentfrow when he commenced working for Bagley & Rose. He remembers the circumstance of the "fancy dash" exhibited at the fair grounds at La Porte. He says Rentfrow made it, and he thinks it was made in Mr. Bagley's shop. He thinks it belonged to Mr. Bagley; it was put onto a buggy and sold with the buggy. He thinks it was in 1855 or 1856 that the dash was on exhibition.

Being asked (in question 7) " Did Mr. Rentfrow ever, to your knowledge, make a carriage dash or two dashes out of five-eighths oval iron for separate feet, with two or three holes drilled in the lower bar of the dash and two or three holes drilled in the upper end of each foot?" he answered " No."

On being asked (in question 8) whether or not Mr. Rentfrow, while working for Bagley & Rose, made a dash or two dashes for a stranger who wanted to take them himself, and whether Rentfrow built him two dashes without feet, so that he could attach them to any width body, and whether the stranger paid Rentfrow for the dashes and took them away, or any like or similar circumstance, he says: "I have no recollection of anything of the kind." He says that he has no knowledge that Rentfrow ever built such dashes or made them right or left feet.

Mr. Kimberly further says that he does not know of any such circumstance where Bagley & Rose made a dash or dashes having laterally adjustable feet or attachments for the purpose of connecting them to vehicles of different widths (Ans. 10, page 75); and that not to his knowledge did Rentfrow during the time he worked for Bagley & Rose make a dash or dashes as follows: " The bottom rail had a long square place on it to receive one, two, or three holes, as it may be, and a foot turned up with a square corner with a hole drilled through it, one or two, as it may be, and bolted it onto the dash " (Ans. 11, page 75); and he says, in answer to interrogatory 15, page 76, that if Rentfrow had made a dash or dashes like that shown in

the drawing of patent No. 213,529, and had repaired a dash or dashes like that described in question 13, while he was working for Bagley & Rose, he would have known the fact.

Mr. WILLIAM C. PITNER (page 80 of Record), being duly sworn, says he is a carriage-maker, and that he began to work for Bagley & Rose in 1853, and worked for them nearly seven years. He was acquainted with Rentfrow, and says he (Rentfrow) went to work for Bagley & Rose in the spring of 1854. He recollects of a fancy dash with a solid foot, "turkey-winged," being exhibited at the fair grounds at La Porte. It was made by William Rentfrow in Bagley & Rose's shops; it belonged to the company; it was put on a buggy and sold. It was unusual to exhibit dashes separate from the vehicles at fairs at this time.

Being asked whether he remembered of Rentfrow's making two carriage dashes, five-eighths oval iron, for a man who wanted to take them South and who did not know the width of his vehicles, as they were not built yet; whether he (Pitner) recollects whether Rentfrow made right and left feet for these dashes so that the man going South could attach them to any width of body that he wished, Pitner replies: "I remember nothing of the kind occurring in the shop while I worked for Bagley & Rose. (See Ques. and Ans. 10, page 81.)

He says he does not think Rentfrow made a dash or dashes having laterally adjustable feet or attachments for the purpose of connecting them to vehicles of different widths. (Ans. 11.)

Pitner says that he does not think while he worked for Bagley & Rose that Rentfrow made any dash or dashes like that described in the drawing of the patent No. 213,529, that had one, two, or three holes to suit the width, instead of the slots.

He is satisfied that while Rentfrow worked for Bagley & Rose he (Rentfrow) did not repair a dash where the foot had been broken off, turning up a foot, drilling a hole through it and through the dash, and bolting it back on the job again. (Ans. 12, page 82.)

Mr. Pitner worked very steadily, scarcely ever lost *any* time from sickness, and in every case he was never absent *more than one* day at a time during the time that Mr. Rentfrow worked for Bagley & Rose (X Ans. 28 and 29). He thinks there were never any dashes made in Bagley & Rose's shop that he did not see (X Ans. 30). He further states that never to his knowledge did Mr. Rentfrow ever make any dashes of any kind and sell them to a man that took them South (X Ans. 35); and had Rentfrow done so he (Pitner) thinks he would have known it, from the fact that in those days dashes were never made and sold, as now, separate by themselves, and he adds: "It would be almost an impossibility for a workman to make two dashes and ship to one party without my knowing of the circumstances." (X Ans. 36).

Alleged Anticipation at Mishawaka.

Rentfrow says that in 1867–'68, *he thinks*, he was living in Mishawaka, Ind., as near as he can recollect. While there he made a dash

having a number of holes in the lower bar for the purpose of connecting it to vehicles of different widths. He made one for Doctor Grimes, he thinks, as near as he can tell, and one for Mr. Shank. He cannot give any of the circumstances connected with the dash made for Mr. Shank.

It will be observed that in the answers of Rentfrow from 40 to 45, inclusive, he cannot say he made any dashes for drop-front buggies or piano-boxes, but in answer 46 he says: "I made some of these dashes for buck-boards in Mishawaka, as near as I can recollect, between 1875 and 1878." It will be observed that in his direct examination he said that he manufactured them at Mishawaka between 1867 and 1878, but now he says between 1875 and 1878. He says that after the time he made these two dashes for this man, who paid him and took them away from La Porte, as near as he can recollect, the next time he made a dash with feet making provision for lateral adjustment was between 1865, '67, '68—along there some time—for Wood, Eberhart & Nutt, Mishawaka, Ind. He does not know of any particular circumstances. He was ordered to make a couple of dashes and he made them. When asked to describe these dashes he says: "I think they were made for a couple of buck-boards, as near as I can recollect. I made the two dashes having separable feet." When asked why he made them with separable feet he answered (Ans. 81): "Because *I think* the bottom of the buck-boards wasn't made yet, and through some cause or other the trimmer was going away;" that if he had the dashes he could trim them right up, and they could be used at any time afterwards. The lower part of each dash was made with a square, flat space on it to receive a separable foot, the same as shown in the drawing shown him to-day. (Note.—Is not this a strange coincidence?) The lower bar of the dash was drilled with one, two, and three holes in it. When asked how many holes he bored at each end of the dash in the lower bar he answers: "One, two, and three. Sometimes I would vary." On being pressed for a more definite answer he replies: "As near as I can recollect; I won't say positive which, two or three." When asked as to the number of holes he bored in the upper end of each of the feet made for these two buck-boards at Mishawaka the answer is, "I cannot recollect just how many holes; two or three, though;" and the upper end of each foot was bent in the form of an L or F (Ans. 87) as near as he can recollect. He presumes these dashes were put on buck-boards and — after they were made (Ans. 88.) He says these dashes for these buck-boards were made one size, and, as he said before, two or three holes in, as near as he can recollect. He says the part of the dash which contained the slot for the adjustment of the foot was from an inch to an inch and an eighth by one-fourth to five-sixteenths thick, the balance being five-eighths old iron. Between the years 1864, 1865, and 1868—along there—(Ans. 100) he worked for Wood, Eberhart & Nutt. Being asked when he worked there at Mishawaka (Q. 102) he replies: "I worked there between the years 1874, '5, '7, '8—along there." It will be observed that a few moments before he said he

worked there in 1864–1868. If this were the only error he had made in dates it might have been charged to a slip of the tongue; but, as it is evident, he testifies to many gross variances of times. In answer—he had testified to 1865 to 1868—still later, after a portion of evidence rebutting his had been taken and he became conscious of his position in this case, through counsel, he came in and requested to be allowed to change the statement of the time he was at Mishawaka from 1864 and 1869 to 1854 and 1859. Permission was refused. (Note.—It will be observed that in his answer 58 he states he made it (dash) " in La Porte between '50 and '55, '56, and '57—thereabout.) So if he had been allowed to change his dates as to Mishawaka from '65–'69 to '54–'59 he would have trenched *three* years on the time he lived at Mishawaka. Eberhart, of the firm of Wood, Eberhart & Nutt, having conclusively shown this firm began and ended in the fifties, Rentfrow was evidently anxious to move his dates thereto. " Wood, Eberhart & Nutt ran two furnaces part of the time, and part of the time three." Could not just state when he made these buck-board dashes; says, " I am not keeping dates. I could not tell exactly when."

Albert C. Post was a witness on behalf of defendants. He says that in the years 1864 and 1868 he was at Mishawaka, St. Joseph county, Indiana, in the occupation of carriage-trimming. (Note.—It will be observed Post also puts his dates ten years too late.) He was then and there employed by Wood, Eberhart & Nutt, and he covered the dashes made by them and put these dashes onto vehicles that they made. He was familiar with the construction of the dashes made by them. He says that during these years that firm made some footless dashes, with separate feet for attaching them to vehicles, and that these dashes had provision for lateral adjustment for the purpose of attaching them to vehicles of different widths. He says that these dashes, having lateral adjustment feet or attachments, were made, one for Dr. Grimes, one for a repair job belonging to a Dunkard—he could not give the Dunkard's name; that he made one for a phaeton for Shank. He made other jobs for the trade; cannot tell anything about them. The vehicle to which the dash having lateral adjustment feet or attachments was made for Dr. Grimes was a buck-board. The kind of vehicle made for the Dunkard was a family carriage—standing top and a foot-board on the front. Wood, Eberhart & Nutt did not make this family carriage of the Dunkard's. It had a wooden dash on it, which got broken off. The Dunkard had a leather dash, as we term it, made and put on with an apron in. It had two holes in the lower bar of the dash at one end and three holes in the lower bar of the dash at the other end. The way they came to do that was they had to move the left-hand foot to the left in order to miss the bolts that held the foot-board on. (See his Ans. 23, page 33, and Ans. 58, page 37.) In other words, a mistake was made in the point of attaching the feet and they had to rectify it. There was no conception of lateral adjustment. The vehicle to which the dash made for Shank was

attached was a phaeton, he thinks, new buggy all through, made by Wood, Eberhart & Nutt. At the same time a dash was made. The body was made first. On Mr. Shank's phaeton was a double foot. The foot on the under side of the body sill came up and attached to the lower rod of the dash, and then made a turn there on the outside and formed the brace, and it attached to the other side of the upright bar, a little over half the distance, forming a brace on the outside of the dash.

Q. 52. How did you happen to recollect it was in the left end of the dash at the extra fifth hole he bored? A. Because I had the right-hand foot all bolted on, and went to bolt the left-hand foot, and could not on account of the bolts running through the footboards. (Note.—This change was a mere make-shift.)

Did you then and there bore the fifth hole? (Q. 74.) A. I afterwards took the dash to a blacksmith's shop and had the fifth hole drilled in.

Q. 75. To whom did you take the dash to have the fifth hole drilled in it, and who drilled said hole? A. I think I told Mr. Rentfrow, and I think his laborer drilled the hole.

It is evident from this testimony that the idea of lateral adjustment was not present, and that on account of a failure to fit the dashes, as they should have done, they were compelled to take the dash off again and redrill a hole so as to make the feet come right on the body. Evidently there is no conception here of the principle of the previous invention. It will also be observed that Post contradicts Rentfrow in regard to the number of holes drilled in the foot for the dash of the Dunkard vehicle. Post says there was one, while Rentfrow says there were two or three.

In question 52 Post is asked: "Was there more than one hole drilled in the upper part of the dash foot?" The answer is: "But one in the *upper* part, three holes in each foot."

Post not only places the time when these alleged events took place at Mishawaka ten years too late, but he contradicts Rentfrow.

REBUTTAL.

AND NOW LET US CONSIDER THE EVIDENCE IN REBUTTAL, WHICH OVERTHROWS THE TESTIMONY OF RENTFROW AND POST.

JAMES F. GRIMES (page 51 of Record), being duly sworn, says he is 58 years of age; a surgeon and physician; lives in Mishawaka; has been continuously engaged in the practice of his profession at Mishawaka for thirty-one years; says he is the only Dr. Grimes he knows of in St. Joseph county or ever has been since he came there, excepting his son, and he thinks that he would have known it had

there been one. The son is thirty years old and has been practicing with him, Dr. Grimes, for the last five years, more or less.

This settles the question as to there being more than one Dr. Grimes in the county at the time the depositions of Post and Rentfrow were taken.

Mr. Grimes is asked whether he ever purchased a buck-board from Wood, Eberhart & Nutt. He says, "No; not to my knowledge." When attending his patients he generally went on horseback in the country and in the village on foot. The first vehicle he owned after coming to Mishawaka was a sulky (Ans. 10). He bought it of Messrs. Chapin & Graham. He used it several years—probably five—but cannot say just how long. He thinks he purchased this sulky probably in 1854–'55. He also (Ans. 12) bought a buck-board of the same parties or at the same shop about a year after he bought the sulky. He used this buck-board probably three, four, or five years—wore it out pretty nearly. He then purchased another buck-board of Studebaker Bros., of South Bend, and the next vehicle of Coquillard, of South Bend, eight or nine years ago.

He states that the dash of the buck-board he bought of Chapin & Graham was a common, cheap dash with a leather cover and *with feet solid with the frame of the dash.* Dr. Grimes states that he saw the dash with the leather covering removed. He had this dash recovered at the shop of Henry Graham. He says that during the time (Ans. 57) he owned the buck-board the dash was never broken off, so that he never had to have a new dash put on or the old one put back and connected in a different manner from that in which he has described it as being connected when he bought it from Chapin & Graham, and that when he sold the buck-board to Mr. Long the dash was attached to the body in the same manner and by the same means as when he got it, substantially so. The feet were the same.

Query. Why had not the defendants produced Mr. Long and the dash if they had any doubt as to the correctness of Dr. Grimes' testimony?

As to the Reputation of Mr. Post for Truth and Veracity.

On cross-examination by the defendants Dr. GRIMES is asked, page 54 of Record:

"X Q. 37. What is the reputation of Albert C. Post for honesty, truthfulness, and integrity in this community?"

To which he replies:

"A. Mr. Post and I never had any trouble personally. I don't want to answer that question if it can be avoided."

JOHN H. EBERHART (page 59 of Record), being duly sworn, says that he is fifty years of age and a member of the firm of Wood, Eberhart & Nutt. The firm manufactures wagons and carriages. His connection with the firm began in the fall of 1855, when the firm began

business. It continued until the 1st of February, 1858, when it sold out. He was generally superintendent of the firm during that entire time. He knew Albert C. Post, who worked for the firm from March, 1856, and continued there until the firm quit business; also acquainted with Rentfrow, who worked for the firm as a blacksmith from in November, 1856, until the firm quit business. Mr. Eberhart says (Ans. 6, page 60 of Record): "Being superintendent of the work, it was my business to look after all the different branches of work done by the firm, and I was familiar with the construction of the dashes that said firm made." He also says that the firm of Wood, Eberhart & Company never made any dashes having provision for lateral adjustment for the purpose of attaching them to vehicles of different widths. They never made dashes or dash-feet for the front end of the body which they were attached to, and with holes drilled in the lower rod of the dash to attach the foot to them (Ans. 8 and 14). He also says that the firm never made such a dash as is described in interrogatories 7 and 8, and did not sell the same to Dr. Grimes, nor applied the same to a buck-board which they sold. He says the firm never sold a buck-board to Dr. Grimes. (Ans. 15, page 61.)

JAMES NUTT (page 68 of Record), being duly sworn, says he is fifty-two years of age, and is a carriage-maker; was a member of the firm of Wood, Eberhart & Nutt. The firm began in 1855 and continued until February, 1858. During all the time the firm was in business Mr. Nutt was the principal wood-worker, and was familiar with all the branches of the work done at the factory of said firm. He frequently assisted at the blacksmith and trimming shops (Ans. 1). He says that he was also familiar with the kinds and construction of vehicle dashes made by Wood, Eberhart & Company during the time that they were in business. He further says that they did not manufacture any adjustable foot. When asked as to whether or not said firm sold a buck-board to Dr. Grimes he answers: "My best recollection is that we did not." (Ans. 9.)

And now as to the vehicle which Rentfrow and Post testify that John Shank bought of Wood, Eberhart & Nutt, and which, as they allege, had several holes in the lower bar of the dash at each end.

Dr. GRIMES says he knows of a man by the name of John Shank living 4½ miles southwest of Mishawaka. He (Grimes) has known him ever since he (Grimes) came to Mishawaka. He says he recalls also another John Shank, who lived in South Bend five or ten years ago, but is now dead, but at that time a young man about 21 or 22 years old. He died some four years ago. While living at South Bend he was deputy treasurer of the county. (Ans. 38 and 39.)

JOHN SHANK (page 57 of Record), being duly sworn, says he is 79 years of age; lives in Portage township, St. Joseph county, Ind.;

occupation is that of farming; has lived in the vicinity about 37 years. He says there were old residents of the name of John Shank who lived there. He had some young nephews who are named after him. His father's name was John, but he died in 1860. Shank says that he purchased a buggy, but he does not know from whom. He thinks the Eberharts were concerned in it. He sold this buggy to his brother, Samuel Shank, who lived in Indianapolis. His brother took this buggy home with him to Indianapolis. Shank says he cannot describe the kind of dash that was on this buggy. It was a long time ago he bought this buggy, viz., when running a brick-yard (Ans. 10). He was running a brick-yard ten years ago, and he made brick several years after he bought this buggy. He says he sold brick to Wood and Eberhart, and that this buggy was taken as part payment for the brick. (X Q. 17 and 18.)

John Shank's brother, SAMUEL SHANK, being duly sworn (page 66 of Record), says that he is sixty-eight years of age; lives in Indianapolis, Ind; purchased a buggy from his brother, John Shank, about 1854. This was called a rockaway buggy. To the best of his recollection it had a *wooden* dash on it (Ans. 3). He says he owned this wooden rockaway for six years; believes that his old bay mare kicked it all to pieces, which must have occurred in 1865 (Ans. 6 and 7). During the time that Mr. Shank owned this rockaway he does not think that he ever had it repaired. (Ans. 9.)

Mr. EBERHART, above referred to, says that he is quite sure the firm sold a rockaway to Mr. John Shank with a standing top (Ans. 16, page 61, Record). This rockaway had on a wooden dash (Ans. 17). He says that this John Shank is still living about four miles southwest of this place (Ans. 17 and 18). (This is the John Shank whose testimony is referred to.) He (Eberhart) was acquainted with another John Shank, who was deputy treasurer six or eight years ago, but the firm never sold him a buggy. He says that this rockaway with the wooden dash which Mr. Shank owned was sold to him on May 24, 1856; that at the time that Shank got the vehicle the firm got brick from John Shank to build their shops with in 1855 (X Ans. 50–52). He says the firm never made a new dash without solid feet

JAMES NUTT (of Wood, Eberhart & Co., before mentioned) testifies that they sold John Shank (this John Shank who lived in St. Joseph county, southwest from Mishawaka; he thinks southeast from South Bend) a light rockaway that had a child's seat in front. (Ans. 10 and 11, page 69 of Record.)

Mr. EBERHART says that his firm did not make any dashes with the hole drilled in the lower bar a sufficient distance from the outer end to attach a foot to them, and from two to six holes in them or any holes in them. He adds that had they done so he (Eberhart) would have known it. (Ans. 10, page 60 of Record.)

On being asked (in question 11) whether he remembers an incident of a dash of the description such as Rentfrow says was made for a Dunkard, he says: "I do not remember such a circumstance. Had it occurred I would have been likely to have remembered it, unless perhaps it had occurred in my absence. I was absent two or three different times long enough for perhaps a short job of that kind to have been done."

He says that Wood, Eberhart & Company never made a dash or dashes—"the bottom rail, long, square place on it to receive one, two, or three holes, as it may be, and a foot turned up with a square corner for a hole drilled through it, one or two, as it may be, and bolted to the dash by turning up the foot to the right and one to the left." (Ans. 12.)

Mr. Eberhart says that he inspected all the work on any new job that was turned out of any branch of the shop (X Ans. 27, page 62). He attended the sales generally (X Ans. 36). With the exception of one time when he was absent from the shop about two weeks, he thinks he was never absent for more than one or two days at a time (X Ans. 30). He kept the books of the firm at the shop, attended to the sales, and personally inspected and oversaw all the work that was done in each branch of the shop. Their bookkeeping and sales were small and required but little time (X Ans. 39). He says he saw every new job that was turned out of the shop. (X Ans. 40.)

Being asked (in X question 43 by the defendants) "Did the firm of Wood, Eberhart & Company ever repair a broken dash or dashes that had been broken off of vehicles and re-attach them by turning up the front end of the feet that remained attached to the body, and drilling holes through their upper end, and also through the lower bar of the dash, to correspond with the hole in the feet, and then bolted or riveted them together?" he answered:

"We repaired dashes, but never bolted the feet onto the dashes, to my knowledge. I never saw the lower bar of an old dash heavy enough to drill a hole through and put a bolt through it. Such a thing might have been done upon a repair job, but I never saw it."

When asked (question 46), "Would it not strengthen the dash to have it bolted or riveted to the feet instead of welding the feet to it or repairing one that had been broken off?" he answers, "No, sir; it would not."

Eberhart's testimony accords with the fact that in the leather-covered iron-frame dashes made prior to Peters' laterally adjustable dash the iron bars of the frame were only nine-sixteenths to three-quarters of an inch wide and were far too narrow to permit of a bolt hole being drilled through them.

PITNER testifies that the lower bar of the dashes made in the days of Bagley & Rose was five-eighths or three-quarters oval iron, and it would materially affect the strength of such iron by drilling or punching holes or making a slot to receive the bolt or bolts large enough to properly secure the dash to the vehicle. (See Ques. and Ans. 19, page 82.)

EBERHART says the firm never made a new dash without solid feet; that if there ever was a repair job made by said firm having several holes in each end of the lower bar and attached to separate feet by means of bolts or rivets he never saw it.

Mr. NUTT being asked (in question 6, page 68 of Record), whether or not a dash such as is described by Rentfrow was repaired for a Dunkard (see said question 6 for full description of said dash) he answers: "I have no recollection of any occurrence of that kind."

In answer 7 (page 68 of Record) he says that to the best of his knowledge the firm of Wood, Eberhart & Company never made a dash or dashes having a slot or series of holes in the lower bar for the purpose of bolting the dash foot to the dash; that if they had done so he would have remembered it, and that if the said firm had ever made any dash or dashes like the dashes described in questions 4, 5, 6, and 7, being associated with the firm, he thinks that he would have known of anything of the kind if it had been made.

He further states, upon examination, that his attention was never called to a dash or dashes having separable feet that had the feet secured to the dash by means of bolts and nuts until within the last five or six years. When I first saw such dashes I considered them a new improvement in that line. The way in which I considered them an improvement was that I could use them on a wide or narrow body, according to the width of the body sills; they were more easily adjusted for repairs.

To sum up the instances at Mishawaka, it appears that the testimony of Rentfrow is confused and contradictory and is unworthy in itself to clearly describe the patented invention given to the public. Furthermore, as to these instances, the testimony of Post does not agree with that of Rentfrow. In the next place, the vehicle sold to Dr. Grimes is conclusively shown to have no provision for lateral adjustment.

Rentfrow and Post state that the Grimes vehicle was bought of Wood, Eberhart & Company. On the other hand, Dr. Grimes himself and Mr. Eberhart, as well as Mr. Nutt (both the latter of the firm of Wood, Eberhart & Company), distinctly testify that Grimes never bought a buggy of that firm.

As to the incident of the dash of the vehicle paid by John Shank to Wood, Eberhart & Company in part payment of brick, it appears that from the evidence of John and Samuel Shank the vehicle was a rockaway; that it had a dash or dashes; that it had a *wooden dash*, no iron frame, and had no provision for lateral adjustment; and this statement is fully corroborated by Eberhart and Nutt.

As to the dash for the vehicle of the Dunkard, the testimony clearly shows that the dash thereof had no provision for lateral adjustment.

In relation to what is known as positive and negative evidence the following is respectfully submitted:

In certain descriptions of testimony it is true that one positive

witness is worth more than two negative witnesses, but it is also true that in other descriptions of testimony one negative witness is worth two positive witnesses. This point is well illustrated by an example given by one of the judges of the district court of the United States, viz: If A should testify that during the day he had come into the clerk's office for a few minutes and then have gone out and the court officials should deny that Mr. A had been there this testimony of the witness A would carry more weight with it than the negative testimony of the officials of the clerk's office; but if witness A should testify that a regiment of soldiers had during the morning session in the clerk's office, between 9 and 12 o'clock, come into said office and had marched and countermarched for fifteen minutes and then have left and this occurrence was absolutely and positively denied by the officials of the clerk's office the evidence of the officials would be of more value and have more weight than the evidence of A, because the presence of a regiment of soldiers in a clerk's office marching and countermarching for fifteen minutes would be such an unusual event that it would, beyond the shadow of a doubt, be recollected by the officials of the office.

This line of reasoning is applicable in the present case.

Mr. Bagley is asked whether or not during the time Rentfrow worked for Bagley & Rose he made a dash or dashes having laterally adjustable feet or attachments for the purpose of connecting them to vehicles of different widths (Q. 13, page 71 of Record). He replies: "No, sir; I never knew anything of the sort being done at that time. We would have been very much pleased had we known any such way. We had to forge our feet out of Swede's iron. Poor iron they could not be made of; couldn't stand the turning of the corners. It would be a convenience in shipping buggies in packing them. It would have been a greater convenience in saving work than in any other; it would have saved half the work."

Mr. Bagley thinks that about six or seven years ago he first saw a dash having a separable foot or laterally adjustable feet or attachments for the purpose of connecting them to vehicles of different widths. (Ans. 16, page 72.)

In answer to question 17 he says that he considered them when he first saw these dashes a new thing, and he adds: "I think the thing was simple and novel." He is also asked, in question 17, to state whether or not such dashes are now and have been for a few years last past in common use, and answers: "As far as I have noticed they are."

In question 19 he is asked: What advantage, if any, would there be in using channel iron or iron made channel shape in the lower bar of an iron frame, leather-covered, adjustable, footless dash over that of any other form of iron? And in reply he says:

A. There would be an advantage in that the holes could be more easily punched through the channel iron than if it was solid bar iron. It would be lighter and sufficiently strong.

Mr. KIMBERLY says (Ans. 12, page 75): If Rentfrow had made a dash or dashes like the dashes described in questions 7, 8, 9, 10, and

11 or as described in either of said questions he (Kimberly) is certain he would have known it, because it would have been entirely different from anything he had ever seen at that time; and, besides, there was more or less rivalry between journeymen about their work, and everything in the shop was noticed.

Mr. Kimberly is asked (page 80 of Record): Q. 58. From your acquaintance with Rentfrow, and if he had made dashes like the fancy dash without feet (exhibited at the fair) prior to your coming into the shop, do you think you would have heard of it afterwards? And give any reason you may have for the opinion you express.

A. I think I should, as he was very fond of showing his work.

Certainly this last-named fact was very strong additional reason why, if Rentfrow had made any such adjustable device, his fellow-workmen and his employers would have known of it.

Mr. PITNER is asked (page 82 of Record): Q. 13. "If Rentfrow had made a dash or dashes while working for Bagley & Rose like or similar to the dashes described in questions 10, 11, 12, or as described in either of said questions, or had repaired a dash in the manner described in question 12, would you have known such fact? And, if yes, give us some of your reasons *why* you think you would have known it;" and he answers:

A. I am satisfied I would have known it, from the fact of that being an unusual way to make and repair dashes at that time.

He further says that Peters' dash was the first dash he ever saw having separable feet or laterally adjustable feet or attachments for the purpose of connecting them to vehicles of different widths (Ans. 14). He says he considered their mode of attachment new and novel and a useful invention, because the dashes were lighter and easier attached to different sized vehicles, and it was also a cheaper mode of constructing such dashes. (Ans. 16.)

There was also an advantage in shipping such dashes, because they could take the feet off, and by taking the feet off they can pack the dashes closer and be less liable to injure the finish of the same (Ans. 17); that such dashes are now in common use (Ans. 18). He says that the advantage of using channel iron for the lower bar of an adjustable footless dash over that of any other form of iron is that by using channeled iron you could punch or drill your holes or make a slot to receive the bolt or bolts without detracting from the strength of the bar itself, as it would materially affect the strength of either $\frac{5}{8}$ or $\frac{3}{4}$ oval iron by drilling or punching holes or making a slot to receive the bolt or bolts large enough to properly secure the dash to the body of the vehicle (see Ques. and Ans. 19, page 82.) He further states that if dashes had been repaired and he not have seen them that he would have known of it, if in the mode of repairing them they had departed from the general way of doing work at that time. If it was something very different in principle we would have been ordered to adopt the principle in a general way. If the principle was not a good one we would not have been ordered to adopt it; but, whether good or bad, if there had been a departure from the general principles of work at that day, it would have cre-

ated a general talk among the workmen employed in the shop. (See Ques. and Ans. 32–34.)

Pitner considers the making of dashes with adjustable feet or with laterally adjustable feet or attachments "different in principle and a departure from the general way of doing work" (Ans. 42, page 85). He adds that the making of such a dash would have created a general talk among the workmen employed in the shop of Bagley & Rose (Ans. 43). He says that dashes are now extensively made and sold separate by themselves from the vehicle (Ans. 44). He does not remember of ever having seen the so-called channel iron in any place only on Peters' dashes. (Ans. 41.)

Respectfully submitted.

WM. HUBBELL FISHER.

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CLERK.

PETERS
v.
HANSON. } No. 66.

Additional citations submitted on behalf of Appellant.

Fuller *v.* Yentzer, 94 U. S. Rep., 305.

"Improvements in an apparatus of the kind may be valid if new, and if they accomplish a new and useful result, even though all the elements of the same are old, provided the combination or arrangement of the elements is new and of such a character that it involved invention to construct the combination or arrangement. When a subsequent apparatus is substantially the same as one which precedes it, the former is not the proper subject of a patent; but if it be substantially different in construction and mode of operation, then it is as much the proper subject of a patent as if nothing of the kind had ever before been invented."

Strong *v.* Noble, 6 Blatch., 477.

"There is scarcely a patent granted that does not involve the application of an old thing to a new use and that does not in one sense fail to involve anything more. But the merit consists in being the first to make the application and the first to show how it can be made, and the first to show that there is utility in making it."

Hoe *v.* Cottrell, 1 Fed. Rep., 602.

"In the determination of the question whether there was invention in any particular combination, the important point is to ascertain whether novelty and utility existed. It is true

that these requisites may result from mere mechanical skill, and a new and useful combination may be formed by the mere mechanical addition of an old member to an old set of members. But when a device has a new mode of operation, which accomplishes beneficial results, 'courts look with favor upon it.' and are not exacting as to the degree of inventive skill which was required to produce the result. There must be some, but a little will suffice. Furbush *v.* Cook, 2 Fisher, 668; Middletown Tool Company *v.* Judd, 3 Fisher, 144; Stipmson *v.* Woodman, 10 Wall, 117."

Collins, *v.* Coes, 3 Fed. Rep., 226.

"It is ably argued for the defendants that the mere addition of a nut to the Coes wrench has not invention enough to be patentable. Considering however, that the change, simple as it seems, was not made for some 25 years after Coes' wrench was patented and came into common use, and that there appears to be a value in it which others have obtained by a different way, it seems to me that the combination is new and useful in the sense of the Patent Law."

Dederick *v.* Cassell, 9 Fed. Rep., 308.

One of the claims sued upon was:

"The slots I, in combination with the bale-chamber C, provided with shoulders."

The Court said:

"That the plaintiff's press (considered as an entire machine) is the result of a new plan and new combination; that invention was necessary to produce it, and that great benefit has resulted from its production and use, we cannot doubt. * * * None of the several machines referred to, however, were like the plaintiff's, either in plan or combination of parts, or capable of performing its functions. If it be true, as alleged by the defendant, that all the parts embraced in the plaintiff's press, may be found in the various devices previously used to compress hay, cotton, peat and clay, the plaintiff's right to the

new combination, which he constructed, would be none the less complete. It will not answer to say this required no invention, that any mechanic might have selected the parts and combined them. The same might be said with equal force in almost every instance in which a patent for combination is issued. The fact that no mechanic did select and combine the parts and produce such a press, notwithstanding the great need for it, is a sufficient answer to the suggestion."

Starrett *v.* Athol Machine Co., 14 Fed. Rep. 912.

This was a suit on a patent for a Drafting Instrument. In describing the invention the patentee said:

"In carrying out my said improvement, I construct or provide the head with two arms, a, b, of equal lengths, rigidly connected, and arranged with their inner surfaces straight and at right angle with each other; and I form in the head and through one of the arms, midway between its opposite edges, *a slot* c, to receive the ruler or slide-bar; such slot being arranged so as to cause the upper edges of the ruler or slide-bar, when against the upper edges of the slot, to stand at an angle of 45 degrees with the inner face of the two arms."

Lowell J., said:

"The state of the art is that the earlier patent of the plaintiff contains the movable head, rule, and clamping devices precisely like those in this patent, but with only one arm; and that try-squares with two arms had been made before, *but not* provided *with a slot* through one of the arms. The question is whether the change is patentable. There seems to be no doubt that the plaintiff's tool is more convenient, that it has a larger capacity, and perhaps a little more accuracy, from the arrangement of carrying the rule through *a slot* in one arm, than any which are proved to have preceded it. Its convenience is obvious on inspection. The plaintiff's expert considers that there is invention in this; that is that a machanic would not, from mere knowledge and skill, construct a try-square in this way having the older forms before him. The defendant's expert says that

nothing has been done but to duplicate the parts of older try-squares. He means, I suppose, that any mechanic would make this duplication in this way; for it is not true that it is a mere duplicate; it is one *plus a slot*. I am of opinion that this change involved invention."

Adams *v.* Howard, 19 Fed. Rep., 318.

"The difference between the lantern of the second patent and that of the first consists only in a new location of the hinge and spring catch, and the employment of a horizontal guard to form the upper rim of the basket for the purpose of this new location. This change of location seems to have been a very simple thing after it was made. But simple as it may have been, it remedied a grave defect in the lantern of the first patent; and the advantages which it introduced were immediately recognized by the public."

WM. HUBBELL FISHER,
Counsel for Appellant.